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This instrument prepared by and  
after recording mail to:

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## SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

By and among

CJUF III McCaffery Roosevelt Retail LLC, a Delaware limited liability company

and

CJUF III McCaffery Roosevelt Residential I LLC, a Delaware limited liability company

and

CJUF III McCaffery Roosevelt Residential II LLC, a Delaware limited liability company

and

CJUF III McCaffery Roosevelt Park LLC, a Delaware limited liability company

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## LIST OF EXHIBITS

### Exhibit

A	Legal Description of Owner A Parcel
B	Legal Description of Owner B Parcel
C	Legal Description of Owner C Parcel
D	Legal Description of Owner D Parcel
E	Site Plan
F	Shared Facilities Plan
G	Ownership Plan
H	Exclusive Use Facilities Plan
7.1	Plans and Specifications for School Construction
13-1(a) – 13.1(x)	Services
13.5	Billing and Payment
14.5	Existing Use Restrictions On Owner D Parcel
14.6(c)	Approved Signage
23.1	Depositary Agreement
27.10	Subordination

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## SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made and entered into as of the day of February 28, 2014 (the "Effective Date"), by CJUF III McCaffery Roosevelt Retail LLC, a Delaware limited liability company (Owner A, as hereinafter defined), CJUF III McCaffery Roosevelt Residential I LLC, a Delaware limited liability company (Owner B, as hereinafter defined), CJUF III McCaffery Roosevelt Residential II LLC, a Delaware limited liability company (Owner C, as hereinafter defined), and CJUF III McCaffery Roosevelt Park LLC, a Delaware limited liability company (Owner D, as hereinafter defined).

### R E C I T A L S:

**WHEREAS**, the terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 1 of this Declaration;

**WHEREAS**, Owner A is the owner of the Owner A Parcel together with the improvements located thereon. The Owner A Parcel is more particularly described on Exhibit A attached hereto and by this reference made a part hereof;

**WHEREAS**, Owner B is the owner of the Owner B Parcel together with the improvements located thereon. The Owner B Parcel is more particularly described on Exhibit B attached hereto and by this reference made a part hereof;

**WHEREAS**, Owner C is the owner of the Owner C Parcel together with the improvements located thereon. The Owner C Parcel is more particularly described on Exhibit C attached hereto and by this reference made a part hereof;

**WHEREAS**, Owner D is the owner of the Owner D Parcel together with the improvements located thereon. The Owner D Parcel is more particularly described on Exhibit D attached hereto and by this reference made a part hereof;

**WHEREAS**, the Owner A Property, Owner B Property and Owner C Property have been developed as a mixed-use retail and residential project;

**WHEREAS**, the construction of the Plaza has been substantially completed in accordance with Article 5 of the Previous Declaration.

**WHEREAS**, Owner D intends to develop the Owner D Property as a school, and the Owners intend to integrate the Owner D Property into the existing project so that the project will appear generally as depicted on the Site Plan attached hereto as Exhibit E and by this reference made a part hereof

**WHEREAS**, the Owner A Building, Owner B Building and Owner C Building are not, and the Owner D Building will not be, functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress,

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utility services and other facilities and components necessary to their efficient operation and intended use;

**WHEREAS**, the Owners intend to provide for the efficient operation of each respective portion, estate and interest in the Roosevelt Collection Building and the remainder of the Property and intend to assure the harmonious relationship of the Owners of each such respective portion, estate or interest and to protect the respective values of each such portion, estate and interest by providing for, declaring and creating certain easements, covenants and restrictions against, affecting or benefiting all or portions of the Owner A Property, Owner B Property, the Owner C Property and the Owner D Property, which easements, covenants and restrictions will be binding upon, or inure to the benefit of each present and future Owner of the Property, or of any respective portion thereof or interest or estate therein, to the extent provided herein;

**WHEREAS**, at some time subsequent to the recording of this Declaration, Owner B may submit the Owner B Property to the Act and Owner C may submit the Owner C Property to the Act (but neither Owner shall be required to do so);

**WHEREAS**, at some time subsequent to the recording of this Declaration, the Adjacent Parcel Property may be incorporated into the Property so that the incorporated property shall be subject to this Declaration.

**WHEREAS**, Owner A, Owner B and Owner C are parties to that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements ("Previous Declaration") dated as of May 9, 2012 and recorded on May 10, 2012 as Document # 1213110051 in the office of the Cook County Recorder of Deeds, Cook County, Illinois. The Previous Declaration was an amendment and restatement of the Prior Declaration referred to and defined in the Previous Declaration.

**WHEREAS**, the Owners desire to have this Declaration amend and restate the Previous Declaration in its entirety.

**NOW, THEREFORE**, the Owners hereby, amending and restating the Previous Declaration in its entirety (so that no future reference thereto shall be required), declare that the Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, and each of the easements, covenants, conditions, restrictions, uses, privileges and charges created hereunder shall exist at all times hereafter, among, and be binding upon and inure to the extent provided herein, to the benefit of all parties having or acquiring any right, title or interest in or to any portion of or interest in the Property, and each of the foregoing shall run with the land subject to this Declaration.

## ARTICLE 1

### DEFINITIONS

1.1. Whenever used in this Declaration, the following terms (though not deemed to be all inclusive) shall have the respective meanings specified below:

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"2013 Equivalent Dollars" has the meaning set forth in Section 1.3.

"AB Common Stairwells" means Common Stairwell 02, Common Stairwell 18, Common Stairwell 20, Common Stairwell 23, Common Stairwell 26 and Common Stairwell 27.

"AC Common Stairwells" means Common Stairwell 04, Common Stairwell 05, Common Stairwell 06, Common Stairwell 07, Common Stairwell 08, Common Stairwell 09, Common Stairwell 10, Common Stairwell 12, and the Common Stairwell 07 Transfer Corridor.

"Act" means the Condominium Property Act of the State of Illinois and any amendments enacted from time to time.

"Additional Floors Construction" means the additional floors and Facilities that constitute the balance of the Owner C Building and the Facilities that exclusively serve the Owner C Building that may be constructed after the Effective Date, subject to the terms of this Declaration.

"Adjacent Parcel Owner" means CJUF III McCaffery Roosevelt Residential III LLC, a Delaware limited liability company, its successors and assigns as the owner of the Adjacent Parcel Property.

"Adjacent Parcel Property" means that certain property north of the Property, as shown on the Site Plan. The Adjacent Parcel Property is owned by Adjacent Parcel Owner identified above as of the Effective Date

"Affected Owners" has the meaning set forth in Section 16.3.

"Allocated Share" means as to each Owner, such Owner's respective Allocated Share. The Owners acknowledge and agree that the Allocated Share is subject to adjustment from time to time by Master Developer, based on updated, more accurate or more equitable measurement or actual information regarding usage of any Shared Facilities, and any Owner's share of costs incurred for Operating Expenses and Net Capital Costs of Replacement pursuant to Article 13, as applicable. Without limiting the generality of the foregoing, Master Developer shall adjust each Owner's respective Allocated Share of Operating Expenses relating to the Parking Garage to reflect any changes in the number of parking spaces initially allocated to each Owner, as set forth in paragraph 8 of Exhibit 13.5. Such initial allocation is based on the minimum number of parking spaces that will be constructed and the minimum number of parking spaces required for each Owner to meet zoning requirements. Master Developer shall have the right, but not the obligation, to retain Approved Engineer to assist Master Developer in making such adjustments. Any adjustments made by Master Developer shall be binding on all Owners. Notwithstanding the foregoing, Master Developer and the Owners acknowledge and agree that the existing allocation for the Open Space was based upon a business agreement, and therefore the Allocated Share of Owner D with respect to the Open Space will not be subject to adjustment without the prior approval of Owner D (which may be withheld in Owner D's sole discretion) prior to the expiration or earlier termination of the lease between Owner D and the school tenant (British Schools of America, LLC), after which time Master Developer shall have the right to adjust the allocation for the Open Space, but shall not readjust the Allocated Share for the Open Space more frequently than five (5) years from the date of any prior adjustment. If Owner D promptly

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objects to any such adjustment or readjustment, it shall provide a comprehensive report setting forth its reasons for such objection and a substantiation of its proposed allocation, and if Master Developer and Owner D are unable to promptly resolve any dispute, the dispute will become an Arbitrable Dispute. It is acknowledged and agreed that the existing allocation for the Open Space was based upon a business agreement that took into account matters in addition to expected number of users and hours of use and assumed that the school tenant would be operating at capacity.

“Alterations” has the meaning set forth in Section 21.1(a).

“Altering Owner” has the meaning set forth in Section 21.1(a).

“Approved Appraiser” means a MAI appraiser selected by Owner A to determine the appraised value of each Owner’s Property (it being acknowledged that the determination of the Approved Appraiser shall be binding on all Owners).

“Approved Engineer” means a licensed engineer selected by Master Developer to assist Master Developer in the determination of each Owner’s Allocated Share (or in any other determination relating to construction or engineering matters that Master Developer has the right or obligation to make pursuant to this Agreement, including but not limited to the determination of certain utility cost allocations set forth in Article 13 and the Exhibits thereto).

“Approving Party” has the meaning set forth in Section 14.8.

“Arbitrable Dispute” means any dispute arising under this Declaration which is expressly made subject to arbitration under the provisions of Article 18 hereof or is designated in this Declaration as an Arbitrable Dispute.

“Architect” has the meaning set forth in Section 25.1.

“Award” has the meaning set forth in Section 20.1.

“Benefited Owner” has the meaning set forth in Paragraph 2 of Exhibit 15.5.

“Building” means all improvements now or hereafter situated within and upon the Owner A Parcel, Owner B Parcel, Owner C Parcel and Owner D Parcel that are owned or controlled by the respective Owner, and are used or useful in connection with the ownership, operation or maintenance of the improvements and/or Facilities located within and upon the Owner A Parcel, Owner B Parcel, Owner C Parcel and Owner D Parcel. The term “a Building” means the Owner A Building, Owner B Building, Owner C Building and/or Owner D Building, as applicable.

“Business Day” means a day of the year on which banks are open for business in the State of Illinois.

“CCD” means Chicago City Datum.

“CECO Vaults” means, collectively, the CECO Vault East and the CECO Vault West.

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“CECO Vault East” means that certain room located at the P3 Level of the Owner A Building labeled as “CECO Vault East P3-10-02” on the Shared Facilities Plan that is the location of machinery and equipment that provide the origination of electrical service to the Owner A Property and the Owner B Property.

“CECO Vault West” means that certain room located at the P3 Level of the Owner A Building labeled as “CECO Vault Southwest 01 P3-01-04” on the Shared Facilities Plan that is the location of machinery and equipment that provide the origination of electrical service to the Owner A Property and the Owner B Property.

“City” means the City of Chicago, Illinois, a municipal corporation.

“Claim” has the meaning set forth in Section 14.1.

“Common Stairwell 02” means that certain stairwell designated as “Stair 02 P3-02-05”, “Stair 02 P2-2-01”, “Stair 02 P1-02-01”, “Stair 02 R1-02-04”, “Stair 02 R2-02-04” on the Shared Facilities Plan that is situated in the Owner A Building at and below Retail 2 Level and in the Owner B Building above Retail 2 Level.

“Common Stairwell 04” means that certain stairwell designated as “Stair 04 P1-03-04”, “Stair 04 P2-3-04”, “Stair 04 P3-03-10” on the Shared Facilities Plan that is situated in the Owner A Building at and below the P2 Level and in the Owner C Building at the P1 Level.

“Common Stairwell 05” means that certain stairwell designated as “Stair 05 P1-03-03”, “Stair 05 P2-03-03”, “Stair 05 P3-03-04”, “Stair 05 R1-03-03” and “Stair 05 R2-03-03” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 06” means that certain stairwell designated as “Stair 06 P3-03-03”, “Stair 06 P2-03-02”, “Stair 06 P1-03-02”, “Stair 06 R1-03-02” and “Stair 06 R2-03-02” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 07” means that certain stairwell designated as “Stair 07 P3-03-02”, “Stair 07 P2-3-01”, “Stair 07 P1-03-01”, “Stair 07 R1-04-05” and “Stair 07 R2-04-04” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 07 Transfer Corridor” means that certain corridor designated as “Stair Transfer PI-03-01” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level that connects Common Stairwell 07 at and above the P1 Level with the Common Stairwell 07 at and below the P1 Level.

“Common Stairwell 08” means that certain stairwell designated as “Stair 08 P3-04-05”, “Stair 08 P2-4-03”, “Stair 08 P1-04-05”, “Stair 08 R1-04-04” and “Stair 08 R2-04-03” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.



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“Common Stairwell 09” means that certain stairwell designated as “Stair 09 P3-04-04”, “Stair 09 P2-04-02”, “Stair 09 P1-04-04”, “Stair 09 R1-04-03” and “Stair 09 R2-04-02” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 10” means that certain stairwell designated as “Stair 10 P3-06-02”, “Stair 10 P2-06-01”, “Stair 10 P1-06-01”, “Stair 10 R1-06-01” and “Stair 10 R2-06-01” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 12” means that certain stairwell designated as “Stair 12 P3-06-6”, “Stair 12 P2-06-04”, “Stair 12 P1-06-05”, “Stair 12 R1-06-04” and “Stair 12 R2-06-02” on the Shared Facilities Plan that is situated in the Owner C Building at the P1 Level, and in the Owner A Building at and below the P2 Level and at and above the Retail 1 Level.

“Common Stairwell 18” means that certain stairwell designated as “Stair 18 P3-08-06”, “Stair 18 P2-08-01”, “Stair 18 P1-08-01”, “Stair 18 R1-09-01”, “Stair 18 R2-09-01”, “Stair 18 R2-09-04” on the Shared Facilities Plan and in the Owner B Building above Retail Level 2, that is situated in the Owner B Building at the P3 Level, in the Owner A Building above the P3 Level and at and below Retail 2 Level.

“Common Stairwell 20” means that certain stairwell designated as “Stair 20 R1-01-01”, “Stair 20 R2-1-04 on the Shared Facilities Plan that is situated in the Owner A Building at the R1 Retail Level and the R2 Retail Level, and in the Owner B Building above Retail 2 Level.

“Common Stairwell 23” means that certain stairwell designated as “Stair 23 R1-02-01”, “Stair 23 R2-2-01 on the Shared Facilities Plan that is situated in the Owner A Building at the R1 Retail Level and the R2 Retail Level, and in the Owner B Building above Retail 2 Level.

“Common Stairwell 26” means that certain stairwell designated as “Stair 26 R1-08-02”, “Stair 26 R2-8-02 on the Shared Facilities Plan that is situated in the Owner A Building at the R1 Retail Level and the R2 Retail Level, and in the Owner B Building above Retail 2 Level.

“Common Stairwell 27” means that certain stairwell designated as “Stair 27 R1-09-05”, “Stair 27 R2-9-03 on the Shared Facilities Plan that is situated in the Owner A Building at the R1 Retail Level and the R2 Retail Level, and in the Owner B Building above Retail 2 Level.

“Common Walls, Floors and Ceilings” means all common structural and partition walls, floors, and ceilings situated on or adjoining the Owner A Building, Owner B Building, Owner C Building and Owner D Building.

“Constructing Owner” has the meaning set forth in Section 11.1(a).

“Consumer Price Index” has the meaning set forth in Section 1.3.

“Contributing Party” has the meaning set forth in Paragraph 1 of Exhibit 13.5.

“Creditor Owner” means an Owner: (A) to whom payment of money or any other duty or obligation is owed under this Declaration by another Owner who has failed to make such

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payment or to perform such duty or obligation as and when required by this Declaration; or (B) who has exercised any self-help remedy provided for in this Declaration. (An Owner may be a Creditor Owner notwithstanding that the term "Creditor Owner" is not specifically stated in a particular provision of this Declaration.)

"Declaration" means this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements, together with all Exhibits, amendments and supplements hereto.

"Default Amount" has the meaning set forth in Section 17.1.

"Defaulting Owner" means an Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to another Owner. (An Owner may be a Defaulting Owner notwithstanding that the term "Defaulting Owner" is not specifically stated in a particular provision of this Declaration.)

"Depository" means the person or entity from time to time acting pursuant to Article 23.

"Easement Facilities" means, collectively, the Owner A Easement Facilities, Owner B Easement Facilities, Owner C Easement Facilities and Owner D Easement Facilities.

"Easements" means all easements declared, granted or created pursuant to the terms and provisions of this Declaration.

"Emergency Situation" means a situation: (i) impairing or imminently likely to impair structural support of a Building; (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to a Building or any property in, on, under, within, upon or about a Building; (iii) causing or imminently likely to cause substantial economic loss to an Owner; or (iv) substantially disrupting or imminently likely to substantially disrupt business operations in a Building for its intended purposes. The duration of an Emergency Situation shall be deemed to commence at the inception of the Emergency Situation and shall include the time reasonably necessary to remedy the Emergency Situation and shall end upon completion of such remedy.

"Exclusive Use Facilities Plan" means that certain plan attached hereto as Exhibit R and by this reference made a part hereof showing those Facilities exclusively used by one (1) Owner, as it may be changed from time to time by the Master Developer (with notice to the Owners promptly after any such change) to reflect changes to such Facilities or the use thereof that are not prohibited by this Declaration.

"Façade" means the exterior wall of a Building (and any replacements or improvements thereto) on the northern, southern, eastern and western sides, from the P3 Level up to the Level 9 Roof, consisting of the granite, limestone, bricks, terra cotta or precast concrete and the cornice at the top of a Building covering or attached to the concrete or steel structural supports forming the curtain wall of a Building, window frames, window systems, joints and seals but excluding: (i) the glass in the windows, window frames, window systems, joints and seals located in a Building; (ii) the roofs and the roof structures, membrane, flashings and seals over the cornice;

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(iii) the loading dock entrance door and systems and joints and seals (if any); and (iv) the structural supports for the exterior wall of a Building to which the Façade is attached.

“Facilities” means any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers (including, without limitation, any chiller serving a Building), closets (for facilities and risers) coils, computers, conduits, controls, control centers, condensers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fixtures, generators (including, without limitation, emergency generator(s)), hangers, heat traces, indicators, junctions, lines, light fixtures, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, sprinklers, starters, steam heating systems (including steam and condensate supply and return risers) switches, sprinkler systems, switchboards, systems tanks, telecommunication equipment, transformers, vacuum pipe valves, wiring, and the like, used in providing services from time to time in any part of a Building, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary security, sensing, telephone, cable television, internet service, microwave signals, satellite transmissions, television, transportation, ventilation and water service, and any replacement of or additions to any of the items described in this paragraph. For the avoidance of doubt, the Owners acknowledge that elevators, elevator shafts and elevator machine rooms shall be included within the definition of Facilities, and that the Shared Facilities shall be included within the definition of Facilities, but that the definition of Facilities shall not include any of the items described in such definition if owned by a tenant or other occupant.

“FAR” means the floor area ratio, i.e., the ratio of the floor area of all principal buildings to the total area of the lot upon which such buildings are located, as defined in Chicago Zoning Ordinance 17-17-0257, as it may be amended from time to time.

“Fire Alarm System” means the alarms, telephones, heat detectors, smoke detectors, annunciators and fire strobe lights that provide for fire suppression and life safety.

“Hazardous Materials” means any hazardous substance, pollutant, contaminant, or waste regulated under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. §9601 et seq.); asbestos and asbestos-containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.); PCBs and other substances regulated under Toxic Substances Control Act, as amended (7 U.S.C. § 136 et seq.); source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, 29 C.F.R. §1910.1200 et seq.; industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.); and other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean-up.

“Impacted Owner” has the meaning set forth in Section 14.2.

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**"Indemnifying Owner"** has the meaning set forth in Section 14.1.

**"Indemnitee"** has the meaning set forth in Section 14.1.

**"Inspecting Owner"** has the meaning set forth in Section 14.7.

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

**"Liening Owner"** has the meaning set forth in Section 14.2.

**"Level 9 Roof"** means the roof of the Owner B Building including, without limitation, the membrane, roof covering, roof structure and improvements located on the Level 9 Roof such as machine rooms, equipment rooms, penthouses, stair rooms and parapets (which are not part of the Façade).

**"Maintenance"** and **"Maintain"** means the operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration, reconstruction and replacement when necessary or desirable of all or any portion of the Building, the Facilities, or other equipment and includes the right of access to and the right to remove from the Building portions of such Facilities or other equipment for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. As used in Article 13, Maintenance excludes obligations for which another Owner is responsible under Articles 12, 16 or 20. Maintenance costs may include utilities.

**"Master Developer"** means Owner A unless and until Owner A appoints another Owner as Master Developer, such other Owner accepts such appointment, and such appointment and acceptance shall have been confirmed by notice from Owner A and the accepting Owner to the other Owners and their Mortgagees. The accepting Owner (and successor accepting Owners) shall likewise have the same right to appoint a successor Master Developer.

**"Mortgage"** has the meaning set forth in Section 27.11(A).

**"Mortgagee"** has the meaning set forth in Section 27.11(A).

**"Net Capitalized Cost of Replacement"** has the meaning set forth in Paragraph 7 of Exhibit 13.5.

**"Net Salvage Value of the Capital Item to be Replaced"** has the meaning set forth in Paragraph 7 of Exhibit 13.5.

**"Non-Constructing Owner"** has the meaning set forth in Section 11.1(a).

**"Non-Controllable Expenses"** has the meaning set forth in Exhibit 13.1(k).

**"Non-Performing Owner"** has the meaning set forth in Article 19.

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“Notice” has the meaning set forth in Section 26.1.

“Occupant” means any Person from time to time entitled to the use and occupancy of any portion of a Building as an Owner, a unit owner (in the case of any portion of a Building which is submitted to the condominium form of ownership) or under any lease, sublease, license, concession or other similar agreement or as a mortgagee in possession.

“Open Space” means that certain area on the roof of the Owner D Property designated “Open Space” on the Shared Facilities Plan.

“Operating Expenses” has the meaning set forth in Paragraph 7 of Exhibit 13.5.

“Operating Owner” has the meaning set forth in Paragraph 2 of Exhibit 13.5.

“Owned Facilities” means a collective reference to the Owner A Owned Facilities, the Owner B Owned Facilities, and the Owner C Owned Facilities. There are no Owner D Owned Facilities. The Owned Facilities are set forth on the Exclusive Use Facilities Plan.

“Owner” or “Owners” means Owner A, Owner B, Owner C, Owner D, or all of them.

“Owner A” means the person or persons or entity or entities (excluding occupants or tenants and the holders of any mortgage) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Owner A Property; provided, however, if any of the Owner A Property is hereafter divided into two (2) or more parts (each, together with the remaining original parcel, if any, a “Subdivided Parcel” and the owner of a Subdivided Parcel, together with Owner A if Owner A continues to own a Subdivided Parcel, being referred to as a “Subdivided Parcel Owner”), either by separation of ownership, by subdivision or otherwise, then, subject to the provisions of this paragraph, all of the benefits, burdens and obligations set forth in this Agreement shall inure and transfer to the owner of each Subdivided Parcel (such burdens and obligations to be joint and several burdens and obligations), provided, however, notwithstanding the foregoing at such time as Owner A subdivides the Owner A Property, Owner A may elect to apportion the rights and obligations of Owner A hereunder among the Subdivided Parcel Owners, provided that if Owner A fails to make such designation within one hundred twenty (120) days after the completion of such subdivision or conveyance, then it shall be deemed as if Owner A elected to apportion such rights and obligations pro rata to the square footage of floor area within the Buildings constructed within the respective Subdivided Parcels with respect to the Owner A Property.

“Owner A Allocated Share” means the allocation of usage by Owner A of any Shared Facilities, or Owner A’s allocated share of costs incurred for Operating Expenses and Net Capital Costs of Replacement pursuant to Article 13, as applicable, as determined by Master Developer.

“Owner A Building” means the Building located within the Owner A Parcel.

“Owner A and B Shared Telecom Rooms” means those certain rooms located in the Owner A Property at the P3 Level and the P1 Level of the Roosevelt Collection Building designated “S W Telecom Room P3-02-04”, “Telecom Room P1-02-07” and “S/E Telecom

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Room P1-08-06” on the Shared Facilities Plan and in the Owner B Property at the P3 Level of the Roosevelt Collection Building designated “S/E Telecom Closet P3-08-09” on the Shared Facilities Plan.

“Owner A Easement Facilities” means the Facilities not owned by Owner A and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located and/or relocated) in any other portion of the Property: (A) primarily benefiting the Owner A Building, or (B) necessary for Owner A to perform its obligations under Article 13 of this Declaration, but in either case excluding: (1) Facilities, the Maintenance of which another Owner is expressly responsible under Article 13 hereof, and (2) the Owner A Owned Facilities.

“Owner A Elevators 3 and 4” means the elevators that are located on the Owner B Property in the Owner A Elevators 3 and 4 Shaft and are designated “Elev. 3” and “Elev. 4” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevators 3 and 4 Shaft” means the elevator shaft housing the Owner A Elevators 3 and 4, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 5” means the elevator that is owned by Owner A and located in the Owner A Elevator 5 Shaft and is designated “Elev. 5” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevator 5 Shaft” means the elevator shaft housing the Owner A Elevator 5, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 5 Machine Room” means that certain room located in the Owner A Property at the P1 Level of the Roosevelt Collection Building designated “Elev. 5 Machine Room P1-06-07” on the Shared Facilities Plan.

“Owner A Elevator 6 Machine Room” means that certain room located in the Owner B Property at the P3 Level of the Roosevelt Collection Building designated “Elevator 6 Machine Room P3-10-07” on the Shared Facilities Plan.

“Owner A Elevator 11” means the elevator that is owned by Owner A and located in the Owner A Elevator 11 Shaft and is designated “Elev. 11” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevator 11 Shaft” means the elevator shaft housing the Owner A Elevator 11, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 11 Machine Room” means that certain room owned by Owner A at the P1 Level of the Roosevelt Collection Building designated “Elev. 11 Machine Room P1-04-03” on the Shared Facilities Plan.

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“Owner A Elevator 13 and 14” means the elevators owned by Owner A that are located in the Owner A Elevator 13 and 14 Shaft and are designated “Elev. 13” and “Elev. 14” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevator 13 and 14 Shaft” means the elevator shaft housing the Owner A Elevator 13 and 14, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 13 and 14 Lobby” means that certain elevator lobby owned by Owner A designated “Retail Elev Lobby P1-05-03” on the Shared Facilities Plan.

“Owner A Elevator 17” means the elevator owned by Owner A that is located in the Owner A Elevator 17 Shaft and is designated “Elev. 17” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevator 17 Shaft” means the elevator shaft housing the Owner A Elevator 17 that is located in the Owner C Property, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 17 Machine Room” means that certain room owned by Owner A located in the P1 Level of the Roosevelt Collection Building designated “Elev. 17 Machine Room P1-05-01” on the Shared Facilities Plan.

“Owner A Elevator 18” means the elevator that is located in the Owner A Elevator 18 Shaft and is designated “Elev. 18” on the Shared Facilities Plan, including the cab, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevator.

“Owner A Elevator 18 Shaft” means the elevator shaft housing the Owner A Elevator 18, including the machine pit(s) and machine room(s) related to such elevator.

“Owner A Elevator 18 Machine Room” means that certain room located in the Owner C Property at the P1 Level of the Roosevelt Collection Building designated “Elevator 18 Machine Room P1-06-04” on the Shared Facilities Plan.

“Owner A Escalator” means Owner A escalator designated on the Shared Facilities Plan as “Escalator 01”.

“Owner A Owned Facilities” means the Facilities owned by Owner A and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in, upon or within any portion of the Parcels or the Building, including, without limitation, in, upon or within any other Owner’s Parcel or Building.

“Owner A Parcel” means the real property legally described on Exhibit A, located in the City of Chicago, County of Cook and State of Illinois.

“Owner A Property” means the Owner A Parcel improved with the Owner A Building, and the Owner A Owned Facilities.

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“Owner A Restaurant Mechanical Closets” means, collectively, those certain rooms located in the Roosevelt Collection Building designated “Restaurant Mech Closet” on the Shared Facilities Plan.

“Owner B” means the person or persons or entity or entities (excluding occupants or tenants and the holders of any mortgage) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Owner B Property; provided, however, if Owner B converts the form of ownership of all or any portion of its Property to a condominium form of ownership, then, notwithstanding anything to the contrary contained herein, with respect to such portion of the Owner B Property, “Owner B” under this Declaration shall be the condominium association itself and all rights under this Declaration may not be exercised by the individual unit owners, but only by the duly elected board of managers or other applicable governing body of such condominium, except, however, for any rights of ingress and egress which may also be exercised by individual unit owners.

“Owner B Allocated Share” means the allocation of usage by Owner B of any Shared Facilities, or the allocated share of costs incurred for Operating Expenses and Net Capital Costs of Replacement pursuant to Article 13, as determined by the Master Developer.

“Owner B Bicycle Storage Area” means the areas located on the Owner B Property at the P3 Level of the Roosevelt Collection Building and designated “Res. Bike Room AP03-10-03”, “Res. Bike Room B P03-10-09” and “Res. Bike Room C P03-10-11” on the Shared Facilities Plan.

“Owner B Building” means the Building located within the Owner B Parcel.

“Owner B Easement Facilities” means the Facilities not owned by Owner B and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located and/or relocated) in any other portion of the Property: (A) primarily benefiting the Owner B Building, or (B) necessary for Owner B to perform its obligations under Article 13 of this Declaration, but in either case excluding: (1) Facilities, the Maintenance of which another Owner is expressly responsible under Article 13 hereof, and (2) the Owner B Owned Facilities.

“Owner B East Loading Dock” means the platforms, dock stairs, doors and adjoining area for deliveries to and from the Owner B Property that are located at the P3 Level of the Roosevelt Collection Building and designated “Res. Service Dock E P03-01-11” on the Shared Facilities Plan.

“Owner B Elevators” means those certain elevators that are located in Owner B Elevator Shafts and are designated “Elev. 1”, “Elev. 2”, “Elev. 7”, and “Elev. 8” on the Shared Facilities Plan that provide service in the Owner B Building, including the passenger cabs, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevators.

“Owner B Elevator Lobby West” means the area located on the Owner B Property at the P3 Level of the Roosevelt Collection Building and designated “Residential Lobby West P3-02-08” on the Shared Facilities Plan.



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“Owner B Elevator Shafts” means the elevator shafts housing the Owner B Elevators and located in the Owner B Building as shown on the Shared Facilities Plan, including the machine pit(s) and machine room(s) related to such elevators.

“Owner B Loading Docks” means Owner B West Loading Dock and the Owner B East Loading Dock.

“Owner B Owned Facilities” means the Facilities owned by Owner B and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in, upon or within any portion of the Parcels or the Roosevelt Collection Building, including, without limitation, in, upon or within any other Owner’s Parcel or Building.

“Owner B Parcel” means the real property legally described on Exhibit B, located in the City of Chicago, County of Cook and State of Illinois.

“Owner B Property” means the Owner B Parcel improved with the Owner B Building, and the Owner B Owned Facilities.

“Owner B Trash Compactor” means the trash compactor located on the Owner B Property at the P3 Level of the Roosevelt Collection Building and designated “Res. Trash Compactor P3-10-12” on the Shared Facilities Plan.

“Owner B Trash Containers” means those certain trash containers located at the P3 Level of the Roosevelt Collection Building near the Owner B East Loading Dock and the Owner B West Loading Dock and designated “Residential Trash Container” on the Shared Facilities Plan.

“Owner B West Loading Dock” means the platforms, dock stairs, doors and adjoining area for deliveries to and from the Owner B Property that are located in the Owner A Property at the P3 Level of the Roosevelt Collection Building and designated “Res. Service & Dock C P03-01-11” on the Shared Facilities Plan.

“Owner C” means the person or persons or entity or entities (excluding occupants or tenants and the holders of any mortgage) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Owner C Property; provided, however, if Owner C converts the form of ownership of all or any portion of its Property to a condominium form of ownership, then, notwithstanding anything to the contrary contained herein, with respect to such portion of the Owner C Property, “Owner C” under this Declaration shall be the condominium association itself and all rights under this Declaration may not be exercised by the individual unit owners, but only by the duly elected board of managers or other applicable governing body of such condominium, except, however, for any rights of ingress and egress which may also be exercised by individual unit owners.

“Owner C Building” means the Building located within the Owner C Parcel.

“Owner C Allocated Share” means the allocation of usage by Owner C of any Shared Facilities, or Owner C’s allocated share of costs incurred for Operating Expenses and Net Capital Costs of Replacement pursuant to Article 13, as applicable, as determined by the Master Developer.

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“Owner C Easement Facilities” means the Facilities not owned by Owner C and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located and/or relocated) in any other portion of the Property: (A) primarily benefiting the Owner C Building, or (B) necessary for Owner C to perform its obligations under Article 13 of this Declaration, but in either case excluding: (1) Facilities, the Maintenance of which another Owner is expressly responsible under Article 13 hereof, and (2) the Owner C Owned Facilities.

“Owner C Elevators” means the elevators that are located in Owner C Elevator Shafts that provide service in the Owner C Building, including the passenger cabs, doors, motors, wires, cables, electrical service(s), equipment and machinery related to such elevators.

“Owner C Elevator Shafts” means the elevator shafts housing the Owner C Elevators and located in the Owner C Building and in the Owner A Building at the Retail 1 Level, including the machine pit(s) and machine room(s) related to such elevators.

“Owner C Owned Facilities” means the Facilities owned by Owner C and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in, upon or within any portion of the Parcels or the Roosevelt Collection Building, including, without limitation, in, upon or within any other Owner’s Parcel or Building.

“Owner C Parcel” means the real property legally described on Exhibit C, located in the City of Chicago, County of Cook and State of Illinois.

“Owner C Property” means the Owner C Parcel improved with the Owner C Building, and the Owner C Owned Facilities.

“Owner D” means the person or persons or entity or entities (excluding occupants or tenants and the holders of any mortgage) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Owner D Property; provided, however, if any of the Owner D Property is hereafter divided so that a Subdivided Parcel is created, then, subject to the provisions of this paragraph, all of the benefits, burdens and obligations set forth in this Agreement shall inure and transfer to the owner of each Subdivided Parcel (such burdens and obligations to be joint and several burdens and obligations), provided, however, notwithstanding the foregoing at such time as Owner D subdivides the Owner D Property, Owner D may elect to apportion the rights and obligations of Owner D hereunder among the Subdivided Parcel Owners, provided that if Owner D fails to make such designation within one hundred twenty (120) days after the completion of such subdivision or conveyance, then it shall be deemed as if Owner D elected to apportion such rights and obligations pro rata to the square footage of floor area within the Buildings constructed within the respective Subdivided Parcels with respect to the Owner D Property.

“Owner D Allocated Share” means the allocation of usage by Owner D of any Shared Facilities, or Owner D’s allocated share of costs incurred for Operating Expenses and Net Capital Costs of Replacement pursuant to Article 13, as applicable, as determined by Master Developer.

“Owner D Building” means the Building located within the Owner D Parcel.

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“Owner D Easement Facilities” means the Facilities (if any) not owned by Owner D and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located and/or relocated) in any other portion of the Property: (A) primarily benefiting the Owner D Building, or (B) necessary for Owner D to perform its obligations under Article 13 of this Declaration, but in either case excluding Facilities, the Maintenance of which another Owner is expressly responsible under Article 13 hereof.

“Owner D Parcel” means the real property legally described on Exhibit D, located in the City of Chicago, County of Cook and State of Illinois.

“Owner D Property” means the Owner D Parcel improved with the Owner D Building.

“Ownership Plan” means that certain plan attached hereto as Exhibit G and by this reference made a part hereof showing the Owner A Property, the Owner B Property, the Owner C Property and the Owner D Property and certain Facilities located on each such Property.

“P1 Level” means the level in the Roosevelt Collection Building depicted as Level P1 on the Site Plan.

“P2 Level” means the level in the Roosevelt Collection Building depicted as Level P2 on the Site Plan.

“P3 Level” means the level in the Roosevelt Collection Building depicted as Level P3 on the Site Plan.

“P3 Level Service Drive” means that certain driveway located on the P3 Level of the Roosevelt Collection Building designated “Service Drive” on the Shared Facilities Plan that provides access to and from Wells Street from and to the Owner B Loading Docks and certain loading docks owned by Owner A.

“Parcel(s)” means the Owner A Parcel, Owner B Parcel, Owner C Parcel, Owner D Parcel, or all of them.

“Parking Agreement” means that certain Agreement for Unreserved Spaces in a Parking Garage attached hereto as Exhibit 5.2(i), as it may be amended from time to time with the approval of all of the Owners, so long as it shall remain in existence or is replaced by another agreement approved by all of the Owners.

“Parking Garage” means the three level vehicular parking garage and related facilities located on the P1 Level, P2 Level and P3 Level of the Roosevelt Collection Building, including but not limited to escalators and stairways within the Parking Garage. The Parking Garage is included in the Shared Facilities and provides parking for the permitted users of the Owner A Property, the Owner B Property, the Owner C Property and, pursuant to the Parking Agreement, the Owner D Property. The configuration of the Parking Garage is depicted on the Shared Facilities Plan. Subject to the provisions of the Parking Agreement, the Master Developer shall have the right to change such configuration and the number of spaces in the Parking Garage in its reasonable discretion, including but not limited to changes that are required by market demand and for the Owner C Building.

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"Parking Garage Income" means all income derived from the Parking Garage.

"Parking Garage Ramp" means, collectively, that certain entrance ramp that provides access from the Plaza Vehicular Drive to the P1 Level of the Parking Garage that is located on the Retail 1 Level of the Roosevelt Collection Building, and the drive aisles in the P1 Level of the Parking Garage, which ramps and drive aisles are set forth on the Shared Facilities Plan.

"PD" means that certain Residential Business Planned Development 523, as amended, dated December 12, 2012, as further amended by a letter regarding administrative relief from the Zoning Administrator dated November 4, 2013.

"Permittees" means all Occupants and the officers, directors, members, partners, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of a Building.

"Person" means any individual, partnership, firm, association, corporation, limited liability company, trust, land trust or any other form of business or not-for-profit organization or governmental entity.

"Plaza" means, collectively, the walkways, pavement, planters, lighting, landscaping and certain other improvements designated "Plaza" on the Site Plan. For the avoidance of doubt, the Plaza Vehicular Drive and the public sidewalk along Wells Street are included within the definition of Plaza.

"Plaza Vehicular Drive" means that certain vehicular private drive located on the Retail 1 Level of the Roosevelt Collection Building that provides access from and to Roosevelt Road to and from the Retail 1 Level of the Roosevelt Collection Building and the Parking Garage Ramp.

"Previous Declaration" has the meaning set forth in the Recitals.

"Prior Lien" has the meaning set forth in Section 17.1.

"Property" means the Owner A Property, the Owner B Property, the Owner C Property and the Owner D Property.

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

"Replacing Party" has the meaning set forth in Paragraph 1 of Exhibit 13.5.

"Retail Corridors" means those certain corridors on the Retail 1 Level and Retail 2 Level of the Roosevelt Collection Building designated "Retail Corridor R1-01-04", "Corridor R1-06-06", "Corridor R2-09-03", "Corridor R2-01-01" and "Corridor R2-01-02 on the Shared Facilities Plan.

"Roadway" means that certain road located on the Owner D Parcel designated "Roadway" on the Shared Facilities Plan.

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**“Roosevelt Collection Building”** means, collectively, all improvements now or hereafter situated within and located on the Owner A Parcel, the Owner B Parcel, the Owner C Parcel and the Owner D Parcel that are owned or controlled by the respective Owners and are used in connection with the ownership, operation or maintenance of the improvements and/or Facilities located within and upon the Owner A Building, the Owner B Building, the Owner C Building and the Owner D Building.

**“Retail Level 1”** means the level in the Roosevelt Collection Building depicted as Level R1 on the Site Plan.

**“Retail Level 2”** means the level in the Roosevelt Collection Building depicted as Level R 2 on the Site Plan.

**“School Construction”** means the construction of the Owner D Building and the Facilities that exclusively serve the Owner D Building (as well as the Open Space and athletic field to be constructed in connection therewith) that may be constructed after the Effective Date, subject to the terms of this Declaration.

**“Shared Cooling Tower”** means, collectively, the cooling tower, pumps, heat exchanger and appurtenant electrical equipment and piping for the Owner A Building and the Owner B Building that is located on the Level 9 Roof of the Owner B Property.

**“Shared Electrical Supply System”** means the electric meters and Facilities located in the Shared Switchgear Rooms, the CECO Vaults, the Shared Emergency Generators and the Facilities that supply electric service to the Owner A Building and the Owner B Building.

**“Shared Emergency Generators”** means the emergency generators located in the Shared Emergency Generator Rooms.

**“Shared Emergency Generator Rooms”** means, collectively, the rooms located in the Owner A Property at the P3 Level of the Roosevelt Collection Building designated “Emerg. Generator West P3-01-03” and “Generator East P3-08-04”, collectively, on the Shared Facilities Plan that are the locations of the Shared Emergency Generators and related equipment that serve the Owner A Building and the Owner B Building.

**“Shared Facilities”** means any Facilities, including, without limitation, Open Space, Plaza, Roadway, Shared Cooling Tower, Shared Emergency Generators, Shared Electrical Supply System, Shared Fire Pumps, Shared Gas Supply System, Shared Sanitary Sewer System, Shared Security System, Shared Sprinkler System, Shared Storm Sewer System, Shared Water Supply System and Staircase solely to the extent said Facilities are providing services to more than one Owner's Property or more than one Owner's Building, and any other Facilities shown on the Shared Facilities Plan.

**“Shared Facilities Mechanical Rooms”** means the Owner A and B Shared Telecom Rooms, Shared Switchgear Rooms, Shared Emergency Generator Rooms, Shared Fire Pump Rooms and such other rooms and vaults which are the location or origination of Shared Facilities.

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“Shared Facilities Plan” means that certain plan showing the approximate locations of the Shared Facilities and certain other improvements, attached hereto as Exhibit F and by this reference made a part hereof, as it may be changed from time to time by the Master Developer (with notice to the Owners promptly after any such change) to reflect changes to the Shared Facilities or the Owners entitled to use any of the Shared Facilities that are not prohibited by this Declaration.

“Shared Fire Pumps” means the fire pumps and standpipe system, Shared Fire Pump Rooms, which Shared Fire Pumps are providing service for the Shared Sprinkler System.

“Shared Fire Pump Rooms” means the rooms located in the P3 Level of the Owner A Building designated “Master Pump West P3-02-01” and “Fire Pump Rm East P3-08-02” on the Shared Facilities Plan that are the location of the Shared Fire Pumps and the domestic and other water pumps.

“Shared Gas Main” means the gas main that serves the Owner A Property and the Owner B Property.

“Shared Gas Meter” means the bulk gas meter located at the P1 Level of the Owner A Building that measures gas consumption in the Owner A Building and the Owner B Building.

“Shared Gas Supply System” means the Shared Gas Main and Shared Gas Meter that supply gas service to the Owner A Building and the Owner B Building.

“Shared Mechanical Chases” means the shafts, conduits, risers and columns located within the Roosevelt Collection Building and depicted on the Shared Facilities Plan, which Shared Mechanical Chases contain Facilities serving more than one Owner. The Owners acknowledge and agree that the term Shared Mechanical Chases shall not include the Facilities located within the Shared Mechanical Chases.

“Shared Sanitary Sewer Main” means the sanitary sewer mains that services the Owner A Property and the Owner B Property.

“Shared Sanitary Sewer System” means the Shared Sanitary Sewer Main and other Facilities that handle sanitary sewage from the Owner A Building and the Owner B Building, including, without limitation, grease basins and traps.

“Shared Security System” means the shared security personnel and Facilities, including, without limitation, cameras, alarms, monitors, card entry systems and other security devices.

“Shared Security System Room” means that certain room designated “Security Office P3-01-15” on the Shared Facilities Plan, which is the office for security personnel and some of the Shared Security System.

“Shared Sprinkler System” means the shared controllers, piping, sprinkler heads and other equipment related to and connected to the wet and dry sprinkler systems located in and servicing certain areas of the Building.

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“Shared Storm Sewer Main” means the storm sewer mains that serve the Owner A Property and the Owner B Property.

“Shared Storm Sewer System” means the Shared Storm Sewer Main and other Facilities that handle storm water related to the Owner A Building and the Owner B Building.

“Shared Switchgear Rooms” means the rooms located in the P3 Level of the Owner A Property designated “Emerg. Switchgear Southwest P3-01-01”, “Switch Gear Southwest 01 P3-01-05” and “Switch Gear East 01 P3-10-01” on the Shared Facilities Plan in which the electrical distribution panels serving the Owner A Building and the Owner B Building are located.

“Shared Water Main” means the water mains that serve the Owner A Building and the Owner B Building.

“Shared Water Meter” means the bulk meter that measures bulk water consumption in the Owner A Building and the Owner B Building.

“Shared Water Supply System” means the Shared Water Meter, the Shared Water Main, the booster pumps, water heaters, storage tank, pressure reducing valves and other Facilities that supply domestic (City) water to the Owner A Building and the Owner B Building.

“Site Plan” means that certain site plan attached hereto as Exhibit E and by this reference made a part hereof, as it may be changed from time to time by the Master Developer (with notice to the Owners promptly after any such change) to reflect changes in the location and configuration of the Roosevelt Collection Building or Facilities that are not prohibited by this Declaration.

“Staircase” means those certain pedestrian stairs (including all Structural Elements thereof) located on the Owner D Parcel, designated “Staircase” on the Shared Facilities Plan, connecting the roof level of Owner D Property to 9<sup>th</sup> Street.

“Structural Supports” means all construction elements (including without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, bracs and trusses) which are load bearing or which are necessary for the structural integrity of any portion of a Building.

“Successors” shall mean a party’s successors and assigns as owner from time to time of all or any portion of a Property.

“Unavoidable Delay” means a delay in performance of any obligation under this Declaration, other than the inability to make payment of money, that is directly caused by fire or other casualty, national emergency, governmental restrictions or delays to the extent not reasonably foreseeable, enemy action, flood, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area.

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“Utility Company” means any Person, including governmental bodies, furnishing water, chilled water, electricity, sewer, gas, steam, telephone or network television, cable television, satellite equipment and microwave signals or internet service or other services or materials generally known as utilities.

“West Loading Dock Service Corridor” means the service corridors and vestibule located in the Owner A Property at the P3 Level of the Roosevelt Collection Building and designated “Corridor P3-01-02”, “Corridor P3-01-13” and “Vestibule P3-01-14”, collectively, on the Shared Facilities Plan.

“Work” has the meaning set forth in Section 24.1(a).

1.2. Construing Various Words and Phrases. The following words and phrases shall be construed as follows: (i) “At any time” shall be construed as “at any time or from time to time”; (ii) “Any” shall be construed as “any and all;” (iii) “Including” shall be construed as “including but not limited to;” (iv) “Will” and “shall” shall each be construed as mandatory; (v) “May” shall be construed as “may, but shall not be obligated to;” and (vi) “Granted” or “granted” as hereinafter used in Articles 2, 3 and 4 describing Easements shall be deemed to mean “granted, reserved, declared and created”. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration and all references to Exhibits shall refer to the Exhibits attached to this Declaration. The words “herein”, “hereof”, “hereunder”, “hereinafter” and words of similar import shall refer to this Declaration as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Declaration for convenience only and shall not be used to construe the meaning of any part of this Declaration.

1.3. Monetary Adjustment (Equivalent Dollars). For all purposes under this Declaration, any dollar figure shall be deemed to mean “2013 Equivalent Dollars” which means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2013 (subject to any timing of any such adjustment provided for in this Declaration, including but limited to the last sentence of Section 15.4 as to liability insurance limits). The 2013 Equivalent Dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 2013 from (y), the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 2013. As used herein, the term “Consumer Price Index” shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

## ARTICLE 2

### EASEMENTS APPURTENANT TO OWNER A PROPERTY

2.1. In General. For the purposes of this Article 2, the following shall apply:



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(A) Owners B, C and D have granted, reserved, declared and created certain Easements more particularly described in this Article 2. The Easements in this Article 2 shall bind and be enforceable against Owners B, C and D and their respective Successors, grantees and assigns with respect to portions of the Property that they own.

(B) The Easements granted by this Article 2 shall benefit Owner A and its Successors, grantees, assigns and Permittees which own the Owner A Parcel or any interest therein; provided, however, that its Permittees shall be benefited only to the extent such benefits are granted by Owner A.

(C) The Easements granted by this Article 2 shall bind and burden (i) each respective Owner's Property to the extent such Easements are granted by each respective Owner (the Property owned by any such granting Owner shall, for the purposes of this Article 2, be deemed to be the servient tenement). Where only a portion of the Property of an Owner is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(D) The Easements granted by this Article 2 are appurtenant to and shall benefit the Owner A Property, which shall, for the purposes of this Article 2 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Owner A Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Owner A Property as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Declaration, all Easements granted under this Article 2 are irrevocable and perpetual in nature.

(F) In exercising its rights created by an Easement granted under this Article 2, the Owner of the Owner A Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the Owner of the portion of the Property burdened by the Easement, taking into consideration the impact of any disruption on the Owner of the portion of the Property burdened by the Easement. Without limiting the generality of the foregoing, in exercising its rights created by an Easement granted under this Article, the Owner of the Owner A Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the operation of the school on the Owner D Property, and notwithstanding anything to the contrary in this Declaration, no such Easement shall be construed to grant any right of access to the actual school Building (as distinguished from the Open Space and the Staircase).

(G) The Owners granting Easements under this Article may: (1) in connection with the Additional Floors Construction, School Construction, Maintenance, repair or restoration of their respective Building, or (2) in an Emergency Situation; or (3) to prevent a dedication of or accruing of rights by the public in and to the use of any of their respective Property, temporarily prevent, close-off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the Owner benefited by such Easement and only with the approval of such benefited Owner. In no event shall access to the Plaza or the Owner A Building, the Owner B Building, or the Owner C Building be unreasonably restricted without the consent of the Owner of the affected Parcel. The

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Owners granting Easements under this Article may, from time to time, impose: (A) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Property owned by such Owner and described in this Article 2, including establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and (B) reasonable security controls consistent with the use of the Property of such granting Owner and any overall security system for such Property; provided, however, in no event shall such Owner impose any limitations, security controls or systems which would restrict or limit Owner A and its Permittees access to and use of any Easements through which unrestricted vehicular and pedestrian ingress and egress is required to be available for use by Owner A and its Permittees pursuant to any express provisions of this Article 2. In imposing any such limitations or controls, such granting Owner shall take into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Owner A's needs and requirements.

(H) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this Article 2 shall constitute Arbitrable Disputes.

(I) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement as and only to the extent reasonably necessary for the Additional Floors Construction, the School Construction, and Maintenance of the Property of the Owner of the servient tenement, for exercise of rights of self-help granted under Section 17.9 and its rights under Article 16 or Article 21, or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted. Any non-exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement for all uses which do not interfere with or materially adversely affect the right of the Owner of the dominant tenement.

(J) If, in exercising its rights created by an Easement granted under this Article, an Owner shall damage the improvements of another Owner, it shall, subject to Section 15.6, promptly repair such damage.

2.2. Grant of Easements. The following Easements in favor of the Owner A Property are hereby granted:

(a) Ingress and Egress and Use.

(i) Owner B hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner B Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner A Building, (B) any Facilities located in the Owner B Property that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building, including, without limitation, the Owner A Easement Facilities and Owner A Owned Facilities; and (C) any other areas in the Owner B Property as to which an Easement for use or Maintenance has been granted to Owner A, or the

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obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner A under Section 13.6.

(ii) Owner B hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons, and for use in, of, over, on, across and through the AB Common Stairwells to and from the Owner A Property.

(iii) Owner B hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons in, over, on, across and through the Owner B Property for access to, and an exclusive easement for the use and Maintenance of the: Owner A Elevators 3 and 4; Owner A Elevators 3 and 4 Shaft; Owner A Elevator 6 Machine Room and Owner A Restaurant Mechanical Closets. For the avoidance of doubt, Owner B and Owner A hereby acknowledge and agree that Owner A shall have the rights set forth in this Section 2.2(a)(iii) twenty four (24) hours a day, seven (7) days a week.

(iv) Owner B hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons in, over, on, across and through the Owner B Elevators and the Level 9 Roof for access to, and an exclusive easement for the use and Maintenance of the Shared Cooling Tower. For the avoidance of doubt, Owner B and Owner A hereby acknowledge and agree that Owner A shall have the right set forth in this Section 2.2(a)(iv) twenty four (24) hours a day, seven (7) days a week.

(v) Owner C hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner C Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner A Building, (B) any Facilities located in the Owner C Property that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building, including, without limitation, the Owner A Easement Facilities and Owner A Owned Facilities; and (C) any other areas in the Owner C Property as to which an Easement for use or Maintenance has been granted to Owner A, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner A under Section 13.6.

(vi) Owner C hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons, and for use in, of, over, on, across and through the AC Common Stairwells to and from the Owner A Property.

(vii) Owner C hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons in, over, on, across and through the Owner C Property for access to, and for the use and Maintenance of the: Owner A Elevator 5, Owner A Elevator 5 Shaft and Owner A Elevator 5 Machine Room; Owner A Elevator 11, Owner A Elevator 11 Shaft and Owner A Elevator 11 Machine Room; Owner A Elevator 13 and 14, Owner A Elevator 13 and 14 Shaft and Owner A Elevator 13 and 14 Lobby; Owner A Elevator 17, Owner A Elevator 17 Shaft and Owner A Elevator 17 Machine Room; and a non-exclusive easement for ingress and egress for Persons in, over, on across and through the Owner C Property for access to, and an exclusive easement for us and Maintenance of the Owner A Elevator 18, Owner A Elevator 18 Shaft and Owner A Elevator 18 Machine Room. For the avoidance of doubt, Owner C and

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Owner A hereby acknowledge and agree that Owner A shall have the rights set forth in this Section 2.2(a)(vii) twenty four (24) hours a day, seven (7) days a week.

(viii) Owner D hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner D Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner A Building, (B) any Facilities located in the Owner D Property that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building, including, without limitation, the Owner A Easement Facilities and Owner A Owned Facilities; and (C) any other areas in the Owner D Property as to which an Easement for use or Maintenance has been granted to Owner A, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner A under Section 13.6.

(ix) Owner D hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Open Space and for use of the Open Space for any uses permitted by Law, subject to restrictions and regulations imposed by Master Developer. Owner D shall keep the Open Space available for such use during at least the hours that the Plaza is available. Although it shall remain available for appropriate recreational uses, Owner D shall have the right to approve any other use of the Open Space during regular school hours, to the extent such other use would materially and adversely impact school activities. Notwithstanding the foregoing, or anything else set forth in this Declaration, the use of the Open Space and the hours the Open Space is available to the public shall comply with the requirements of the PD (subject to any amendment thereof pursuant to Section 14.5(c) of this Declaration).

(x) Owner D hereby grants to Owner A a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Staircase (pedestrian) and Roadway (pedestrian and vehicular). Owner D shall keep the Staircase available for such use during at least the hours that the Open Space is available and shall keep the Roadway available at all times.

(b) Owner A Property Structural Support.

(i) Owner B hereby grants to Owner A a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner B Property for the support of (A) the Owner A Building, (B) any Facilities or areas located in the Owner B Property with respect to which Owner A is granted an Easement, and (C) any Owner A Owned Facilities.

(ii) Owner C hereby grants to Owner A a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner C Property for the support of (A) the Owner A Building, (B) any Facilities or areas located in the Owner C Property with respect to which Owner A is granted an Easement, and (C) any Owner A Owned Facilities.

(iii) Owner D hereby grants to Owner A a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner D Property for the support

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of (A) the Owner A Building, (B) any Facilities or areas located in the Owner D Property with respect to which Owner A is granted an Easement, and (C) any Owner A Owned Facilities.

(c) Use of Facilities Benefiting Owner A Building.

(i) Owner B hereby grants to Owner A a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner A Easement Facilities, for which an Easement is granted under Section 2.2(d) below) that are (A) located in the Owner B Property, including Owner A Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner A Building that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner A pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(ii) Owner C hereby grants to Owner A a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner A Easement Facilities, for which an Easement is granted under Section 2.2(d) below) that are (A) located in the Owner C Property, including Owner A Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner A Building that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner A pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(iii) Owner D hereby grants to Owner A a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner A Easement Facilities, for which an Easement is granted under Section 2.2(d) below) that are (A) located in the Owner D Property, including Owner A Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner A Building that provide or are necessary to provide the Owner A Building with any utilities or other services necessary to the operation of the Owner A Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner A pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(d) Owner A Easement Facilities.

(i) Owner B hereby grants to Owner A an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner A Easement Facilities located in the Owner B Property, subject to the rights of Owner B set forth in Section 13.6(a).

(ii) Owner C hereby grants to Owner A an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this

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Declaration) and use of the Owner A Easement Facilities located in the Owner C Property, subject to the rights of Owner C set forth in Section 13.6(a).

(iii) Owner D hereby grants to Owner A an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner A Easement Facilities located in the Owner D Property, subject to the rights of Owner D set forth in Section 13.6(a).

(e) Owner A Building Common Walls, Ceilings and Floors.

(i) Owner B hereby grants to Owner A a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner A Parcel and the Owner B Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner A Building.

(ii) Owner C hereby grants to Owner A a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner A Parcel and the Owner C Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner A Building.

(iii) Owner D hereby grants to Owner A a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner A Parcel and the Owner D Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner A Building.

(f) Utilities.

(i) Owner B hereby grants to Owner A (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner A Property in those areas of the Owner B Property where such utilities are currently located or, subject to Owner B's approval, may hereafter be located.

(ii) Owner C hereby grants to Owner A (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner A Property in those areas of the Owner C Property where such utilities are currently located or, subject to Owner C's approval, may hereafter be located.

(iii) Owner D hereby grants to Owner A (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner A Property in those areas of the Owner D Property where such utilities are currently located or, subject to Owner D's approval, may hereafter be located.

(g) Owner A Building Encroachments.

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(i) Owner B hereby grants to Owner A an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner A Building or Owner A Owned Facilities not currently located within the Owner B Parcel encroaches or shall hereafter encroach upon any of the Owner B Parcel. This Easement shall exist only so long as the encroachment portion of the Owner A Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(ii) Owner C hereby grants to Owner A an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner A Building or Owner A Owned Facilities not currently located within the Owner C Parcel encroaches or shall hereafter encroach upon any of the Owner C Parcel. This Easement shall exist only so long as the encroachment portion of the Owner A Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(iii) Owner D hereby grants to Owner A an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner A Building or Owner A Owned Facilities not currently located within the Owner D Parcel encroaches or shall hereafter encroach upon any of the Owner D Parcel. This Easement shall exist only so long as the encroachment portion of the Owner A Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(h) Exterior Maintenance.

(i) Owner B hereby grants to Owner A, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner B Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Façade of the Owner A Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 2.2(h)(i).

(ii) Owner C hereby grants to Owner A, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner C Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner A Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 2.2(h)(ii).

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(iii) Owner D hereby grants to Owner A, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner D Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner A Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 2.2(h)(iii).

(i) Owner A Owned Facilities.

(i) Owner B hereby grants to Owner A an easement permitting the existence, attachment and Maintenance of Owner A Owned Facilities in the Owner B Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner B Property mutually acceptable to Owner B and Owner A.

(ii) Owner C hereby grants to Owner A an easement permitting the existence, attachment and Maintenance of Owner A Owned Facilities in the Owner C Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner C Property mutually acceptable to Owner C and Owner A.

(iii) Owner D hereby grants to Owner A an easement permitting the existence, attachment and Maintenance of Owner A Owned Facilities in the Owner D Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner D Property mutually acceptable to Owner D and Owner A.

(j) Shared Facilities.

(i) Owner B does hereby grant unto Owner A a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner A and its Permittees as is necessary or desirable for the use and operation of the Owner A Building by Owner A (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner A to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 2.2(j)(i), Owner A shall have the right (but not be obligated) to enter the Owner B Building at all reasonable times accompanied by a representative of Owner B (it being agreed that in either the event of an Emergency Situation or if Owner B declines to have a representative present, then Owner A, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner B) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner A shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Owner B Building in the exercise of the foregoing rights of Owner A. The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Owner B, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner B as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down of the Owner B Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner A is responsible pursuant to this Declaration.



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(ii) Owner C does hereby grant unto Owner A a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner A and its Permittees as is necessary or desirable for the use and operation of the Owner A Building by Owner A (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner A to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 2.2(j)(ii), Owner A shall have the right (but not be obligated) to enter the Owner C Building at all reasonable times accompanied by a representative of Owner C (it being agreed that in either the event of an Emergency Situation or if Owner C declines to have a representative present, then Owner A, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner C) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner A shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Owner C Building in the exercise of the foregoing rights of Owner A. The foregoing shall include, without limitation, the right upon reasonable prior notice to and upon the consent of Owner C, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner C as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down of the Owner C Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner A is responsible pursuant to this Declaration.

(iii) Owner D does hereby grant unto Owner A a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner A and its Permittees as is necessary or desirable for the use and operation of the Owner A Building by Owner A (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner A to maintain and continue to use and connect to the Shared Facilities). The foregoing shall include, without limitation, the right to schedule and temporarily shut down the Shared Facilities in connection with the Maintenance of the Shared Facilities for which Owner A is responsible pursuant to this Declaration.

(iv) This Section 2.2(j) does not apply to the portions of the Parking Garage used for parking purposes, easements for which are set forth in Section 2.2(k).

(k) Parking.

(i) Owner B hereby grants to Owner A a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner B Property used for parking purposes. Owner B further hereby grants to Owner A a non-exclusive easement for Maintenance of such portions of the Parking Garage on the Owner B Property.

(ii) Owner C hereby grants to Owner A a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner C Property used for parking

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purposes. Owner C further hereby grants to Owner A a non-exclusive easement for Maintenance of such portions of the Parking Garage on the Owner C Property.

## ARTICLE 3

### EASEMENTS APPURTENANT TO OWNER B PROPERTY

3.1. In General. For the purposes of this Article 3, the following shall apply:

(A) Owners A, C and D have granted, reserved, declared and created certain Easements more particularly described in this Article 3. The Easements in this Article 3 shall bind and be enforceable against Owners A, C and D and their respective Successors, grantees and assigns with respect to portions of the Property that they own.

(B) The Easements granted by this Article 3 shall benefit Owner B and its Successors, grantees, assigns and Permittees which own the Owner B Parcel or any interest therein; provided, however, that its Permittees shall be benefited only to the extent such benefits are granted by Owner B.

(C) The Easements granted by this Article 3 shall bind and burden (i) each respective Owner's Property to the extent such Easements are granted by each respective Owner (the Property owned by any such granting Owner shall, for the purposes of this Article 3, be deemed to be the servient tenement). Where only a portion of the Property of an Owner is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(D) The Easements granted by this Article 3 are appurtenant to and shall benefit the Owner B Property, which shall, for the purposes of this Article 3 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Owner B Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Owner B Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Declaration, all Easements granted under this Article 3 are irrevocable and perpetual in nature.

(F) In exercising its rights created by an Easement granted under this Article 3, the Owner of the Owner B Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the Owner of the portion of the Property burdened by the Easement, taking into consideration the impact of any disruption on the Owner of the portion of the Property burdened by the Easement. Without limiting the generality of the foregoing, in exercising its rights created by an Easement granted under this Article, the Owner of the Owner B Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the operation of the school on the Owner D Property, and notwithstanding anything to the contrary in this Declaration, no such Easement shall be construed to grant any right of access to the actual school Building (as distinguished from the Open Space and the Staircase).

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(G) The Owners granting Easements under this Article may: (1) in connection with the Additional Floors Construction, School Construction, Maintenance, repair or restoration of their respective Building, or (2) in an Emergency Situation; or (3) to prevent a dedication of or accruing of rights by the public in and to the use of any of their respective Property, temporarily prevent, close-off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the Owner benefited by such Easement and only with the approval of such benefited Owner. In no event shall access to the Plaza or the Owner A Building, the Owner B Building, or the Owner C Building be unreasonably restricted without the consent of the Owner of the affected Parcel. The Owners granting Easements under this Article may, from time to time, impose: (A) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Property owned by such Owner and described in this Article 3, including establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and (B) reasonable security controls consistent with the use of the Property of such granting Owner and any overall security system for such Property; provided, however, in no event shall such Owner impose any limitations, security controls or systems which would restrict or limit Owner B and its Permittees access to and use of any Easements through which unrestricted vehicular and pedestrian ingress and egress is required to be available for use by Owner B and its Permittees pursuant to any express provisions of this Article 3. In imposing any such limitations or controls, such granting Owner shall take into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Owner B's needs and requirements.

(H) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this Article 3 shall constitute Arbitrable Disputes.

(I) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement as and only to the extent reasonably necessary for the Additional Floors Construction, School Construction or Maintenance of the Property of the Owner of the servient tenement, for exercise of rights of self-help granted under Section 17.9 and its rights under Article 16 or Article 21, or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted. Any non-exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement for all uses which do not interfere with or materially adversely affect the right of the Owner of the dominant tenement.

(J) If, in exercising its rights created by an Easement granted under this Article, an Owner shall damage the improvements of another Owner, it shall, subject to Section 15.6, promptly repair such damage.

3.2. Grant of Easements. The following Easements in favor of the Owner B Property are hereby granted:

- (a) Ingress and Egress and Use.

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(i) Owner A hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner A Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner B Building, (B) any Facilities located in the Owner A Property that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building, including, without limitation, the Owner B Easement Facilities and Owner B Owned Facilities; and (C) any other areas in the Owner A Property as to which an Easement for use or Maintenance has been granted to Owner B, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner B under Section 13.6.

(ii) Owner A hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons, and for use in, of, over, on, across and through the AB Common Stairwells and the Retail Corridors to and from the Owner B Property.

(iii) Owner A hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons and vehicles in, over, on, across and through the P3 Level Service Drive, the West Loading Dock Service Corridor and the Owner A Property adjoining the P3 Level Service Drive for ingress and egress to the Owner B Loading Docks, Owner B Trash Compactor, Owner B Trash Containers, Owner B Bicycle Storage Area, Owner B Elevators, Owner B Elevator Shafts and Owner B Elevator Lobby West, and an exclusive easement for Persons and vehicles for use and Maintenance of the Owner B Loading Docks and Owner B Trash Containers. In no event shall Owner A be permitted to construct obstructions, barriers or other impediments to unlimited access through the Owner A Property by Owner B and its Permittees under this Section 3.2(a)(iii). For the avoidance of doubt, Owner A and Owner B hereby acknowledge and agree that (x) Owner B shall have the rights set forth in this Section 3.2(a)(iii) twenty four (24) hours a day, seven (7) days a week. Owner A and Owner B acknowledge and agree that: Owner A shall have no obligation to provide security for the Owner B Loading Docks or Owner B Trash Container and in no event shall Owner A be liable for any loss or damage incurred by Owner B or its Permittees in respect of the Owner B Loading Docks or Owner B Trash Containers or incur any liability (unless such loss, damage or liability arises as a result of the gross negligence or willful misconduct of Owner A); Owner B and its Permittees assume the risk of loss of any personal property and shall provide such security as they shall determine to be required under the circumstances at the Owner B Loading Docks and Owner B Trash Containers.

(iv) Owner C hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner C Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner B Building, (B) any Facilities located in the Owner C Property that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building, including, without limitation, the Owner B Easement Facilities and Owner B Owned Facilities; and (C) any other areas in the Owner C Property as to which an Easement for use or Maintenance has been granted to Owner B, or the

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obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner B under Section 13.6.

(v) Owner D hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner D Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner B Building, (B) any Facilities located in the Owner D Property that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building, including, without limitation, the Owner B Easement Facilities and Owner B Owned Facilities; and (C) any other areas in the Owner D Property as to which an Easement for use or Maintenance has been granted to Owner B, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner B under Section 13.6.

(vi) Owner D hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Open Space and for use of the Open Space for any uses permitted by Law, subject to restrictions and regulations imposed by Master Developer. Owner D shall keep the foregoing Shared Facilities available for such use during at least the hours that the Plaza is available. Although it shall remain available for appropriate recreational uses, Owner D shall have the right to approve any other use of the Open Space during regular school hours, to the extent such other use would materially and adversely impact school activities. Notwithstanding the foregoing, or anything else set forth in this Declaration, the use of the Open Space and the hours the Open Space is available to the public shall comply with the requirements of the PD (subject to any amendment thereof pursuant to Section 14.5(c) of this Declaration).

(vii) Owner D hereby grants to Owner B a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Staircase (pedestrian) and Roadway (pedestrian and vehicular). Owner D shall keep the Staircase available for such use during at least the hours that the Open Space is available and shall keep the Roadway available at all times.

(b) Owner B Property Structural Support

(i) Owner A hereby grants to Owner B a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner A Property for the support of (A) the Owner B Building, (B) any Facilities or areas located in the Owner A Property with respect to which Owner B is granted an Easement, and (C) any Owner B Owned Facilities.

(ii) Owner C hereby grants to Owner B a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner C Property for the support of (A) the Owner B Building, (B) any Facilities or areas located in the Owner C Property with respect to which Owner B is granted an Easement, and (C) any Owner B Owned Facilities.

(c) Use of Facilities Benefiting Owner B Building

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(i) Owner A hereby grants to Owner B a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner B Easement Facilities, for which an Easement is granted under Section 3.2(d) below) that are (A) located in the Owner A Property, including Owner B Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner B Building that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner B pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(ii) Owner C hereby grants to Owner B a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner B Easement Facilities, for which an Easement is granted under Section 3.2(d) below) that are (A) located in the Owner C Property, including Owner B Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner B Building that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner B pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(iii) Owner D hereby grants to Owner B a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner B Easement Facilities, for which an Easement is granted under Section 3.2(d) below) that are (A) located in the Owner D Property, including Owner B Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner B Building that provide or are necessary to provide the Owner B Building with any utilities or other services necessary to the operation of the Owner B Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner B pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(d) Owner B Easement Facilities.

(i) Owner A hereby grants to Owner B an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner B Easement Facilities located in the Owner A Property, subject to the rights of Owner A set forth in Section 13.6(a).

(ii) Owner C hereby grants to Owner B an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner B Easement Facilities located in the Owner C Property, subject to the rights of Owner C set forth in Section 13.6(a).

(iii) Owner D hereby grants to Owner B an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this

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Declaration) and use of the Owner B Easement Facilities located in the Owner D Property, subject to the rights of Owner D set forth in Section 13.6(a).

(e) Owner B Building Common Walls, Ceilings and Floors.

(i) Owner A hereby grants to Owner B a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner B Parcel and the Owner A Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner B Building.

(ii) Owner C hereby grants to Owner B a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner B Parcel and the Owner C Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner B Building.

(f) Utilities.

(i) Owner A hereby grants to Owner B (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner B Property in those areas of the Owner A Property where such utilities are currently located or, subject to Owner A's approval, may hereafter be located.

(ii) Owner C hereby grants to Owner B (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner B Property in those areas of the Owner C Property where such utilities are currently located or, subject to Owner C's approval, may hereafter be located.

(iii) Owner D hereby grants to Owner B (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner B Property in those areas of the Owner D Property where such utilities are currently located or, subject to Owner D's approval, may hereafter be located.

(g) Owner B Building Encroachments.

(i) Owner A hereby grants to Owner B an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner B Building or Owner B Owned Facilities not currently located within the Owner A Parcel encroaches or shall hereafter encroach upon any of the Owner A Parcel. This Easement shall exist only so long as the encroachment portion of the Owner B Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

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(ii) Owner C hereby grants to Owner B an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner B Building or Owner B Owned Facilities not currently located within the Owner C Parcel encroaches or shall hereafter encroach upon any of the Owner C Parcel. This Easement shall exist only so long as the encroachment portion of the Owner B Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(iii) Owner D hereby grants to Owner B an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner B Building or Owner B Owned Facilities not currently located within the Owner D Parcel encroaches or shall hereafter encroach upon any of the Owner D Parcel. This Easement shall exist only so long as the encroachment portion of the Owner B Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(h) Exterior Maintenance.

(i) Owner A hereby grants to Owner B, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner A Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Façade of the Owner B Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 3.2(h).

(ii) Owner C hereby grants to Owner B, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner C Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Façade of the Owner B Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 3.2(h).

(i) Owner B Owned Facilities.

(i) Owner A hereby grants to Owner B an easement permitting the existence, attachment and Maintenance of Owner B Owned Facilities in the Owner A Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner A Property mutually acceptable to Owner A and Owner B.

(ii) Owner C hereby grants to Owner B an easement permitting the existence, attachment and Maintenance of Owner B Owned Facilities in the Owner C Property in



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locations now existing or in locations resulting from the construction of the Building or at locations in the Owner C Property mutually acceptable to Owner C and Owner B.

(iii) Owner D hereby grants to Owner B an easement permitting the existence, attachment and Maintenance of Owner B Owned Facilities in the Owner D Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner D Property mutually acceptable to Owner D and Owner B.

(j) Shared Facilities.

(i) Owner A does hereby grant unto Owner B a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner B and its Permittees as is necessary or desirable for the use and operation of the Owner B Building by Owner B (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner B to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 3.2(j)(i), Owner B shall have the right (but not be obligated) to enter the Owner A Building at all reasonable times accompanied by a representative of Owner A (it being agreed that in either the event of an Emergency Situation or if Owner A declines to have a representative present, then Owner B, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner A) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner B shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Owner A Building in the exercise of the foregoing rights of Owner B. The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Owner A, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner A as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut down of the Owner A Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner B is responsible pursuant to this Declaration.

(ii) Owner C does hereby grant unto Owner B a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner B and its Permittees as is necessary or desirable for the use and operation of the Owner B Building by Owner B (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner B to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 3.2(j)(ii), Owner B shall have the right (but not be obligated) to enter the Owner C Building at all reasonable times accompanied by a representative of Owner C (it being agreed that in either the event of an Emergency Situation or if Owner C declines to have a representative present, then Owner B, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner C) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner B shall exercise commercially reasonable efforts to minimize interference with the use and operation of

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the Owner C Building in the exercise of the foregoing rights of Owner B. The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Owner C, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner C as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down of the Owner C Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner B is responsible pursuant to this Declaration.

(iii) Owner D does hereby grant unto Owner B a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner B and its Permittees as is necessary or desirable for the use and operation of the Owner B Building by Owner B (the foregoing to include the right to maintain any ductwork, wiring and equipment as are necessary or appropriate to enable Owner B to maintain and continue to use and connect to the Shared Facilities). The foregoing shall include, without limitation, the right to schedule and temporarily shut down the Shared Facilities in connection with the Maintenance of the Shared Facilities for which Owner B is responsible pursuant to this Declaration.

(iv) This Section 3.2(j) does not apply to the portions of the Parking Garage used for parking purposes, easements for which are set forth in Section 3.2(k).

(k) Parking.

(i) Owner A hereby grants to Owner B a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner A Property used for parking purposes.

(ii) Owner C hereby grants to Owner B a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner C Property used for parking purposes.

## ARTICLE 4

### EASEMENTS APPURTENANT TO OWNER C PROPERTY

4.1. In General. For the purposes of this Article 4, the following shall apply:

(A) Owners A, B and D have granted, reserved, declared and created certain Easements more particularly described in this Article 4. The Easements in this Article 4 shall bind and be enforceable against Owners A, B and D and their respective Successors, grantees and assigns with respect to portions of the Property that they own.

(B) The Easements granted by this Article 4 shall benefit Owner C and its Successors, grantees, assigns and Permittees which own the Owner C Parcel or any interest therein; provided, however, that its Permittees shall be benefited only to the extent such benefits are granted by Owner C.

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(C) The Easements granted by this Article 4 shall bind and burden (i) each respective Owner's Property to the extent such Easements are granted by each respective Owner (the Property owned by any such granting Owner shall, for the purposes of this Article 4, be deemed to be the servient tenement). Where only a portion of the Property of an Owner is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(D) The Easements granted by this Article 4 are appurtenant to and shall benefit the Owner C Property, which shall, for the purposes of this Article 4 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Owner C Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Owner C Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Declaration, all Easements granted under this Article 4 are irrevocable and perpetual in nature.

(F) In exercising its rights created by an Easement granted under this Article 4, the Owner of the Owner C Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the Owner of the portion of the Property burdened by the Easement, taking into consideration the impact of any disruption on the Owner of the portion of the Property burdened by the Easement. Without limiting the generality of the foregoing, in exercising its rights created by an Easement granted under this Article, the Owner of the Owner C Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the operation of the school on the Owner D Property, and notwithstanding anything to the contrary in this Declaration, no such Easement shall be construed to grant any right of access to the actual school Building (as distinguished from the Open Space and the Staircase).

(G) The Owners granting Easements under this Article may: (1) in connection with the Additional Floors Construction, School Construction, Maintenance, repair or restoration of their respective Building, or (2) in an Emergency Situation; or (3) to prevent a dedication of or accruing of rights by the public in and to the use of any of their respective Property, temporarily prevent, close-off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the Owner benefited by such Easement and only with the approval of such benefited Owner. In no event shall access to the Plaza or the Owner A Building, the Owner B Building, or the Owner C Building be unreasonably restricted without the consent of the Owner of the affected Parcel. The Owners granting Easements under this Article may, from time to time, impose: (A) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Property owned by such Owner and described in this Article 4, including establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and (B) reasonable security controls consistent with the use of the Property of such granting Owner and any overall security system for such Property; provided, however, in no event shall such Owner impose any limitations, security controls or systems which would restrict or limit Owner C and its Permittees access to and use of any Easements through which unrestricted vehicular and pedestrian ingress and egress is required to be available for use by Owner C and its

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Permittees pursuant to any express provisions of this Article 4. In imposing any such limitations or controls, such granting Owner shall take into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Owner C's needs and requirements.

(H) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this Article 4 shall constitute Arbitrable Disputes.

(I) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement as and only to the extent reasonably necessary for the Additional Floors Construction, School Construction and Maintenance of the Property of the Owner of the servient tenement, for exercise of rights of self-help granted under Section 17.9 and its rights under Article 16 or Article 21, or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted. Any non-exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement for all uses which do not interfere with or materially adversely affect the right of the Owner of the dominant tenement.

(J) If, in exercising its rights created by an Easement granted under this Article, an Owner shall damage the improvements of another Owner, it shall, subject to Section 15.6, promptly repair such damage.

4.2. Grant of Easements. The following Easements in favor of the Owner C Property are hereby granted:

(a) Ingress and Egress and Use.

(i) Owner A hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner A Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner C Building, (B) any Facilities located in the Owner A Property that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building, including, without limitation, the Owner C Easement Facilities and Owner C Owned Facilities; and (C) any other areas in the Owner A Property as to which an Easement for use or Maintenance has been granted to Owner C, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner C under Section 13.6.

(ii) Owner A hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons, and for use in, of, over, on, across and through the AC Common Stairwells and the Retail Corridors to and from the Owner C Property.

(iii) Owner A hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons and for use in, of, over, on, across and through the Plaza Vehicular Drive and Parking Garage Ramp to and from the Owner C Building. In no event shall Owner A be permitted to construct obstructions, barriers or other impediments to unlimited

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access through the Owner A Property by Owner C and its Permittees under this Section 4.2(a)(iii). For the avoidance of doubt, Owner A and Owner C hereby acknowledge and agree that Owner C shall have the rights set forth in this Section 4.2(a)(iii) twenty four (24) hours a day, seven (7) days a week.

(iv) Owner A hereby grants to Owner C an exclusive easement for ingress and egress for persons and for use in, of, over, on, across and through the Retail 1 Level of the Owner A Property to the extent reasonably necessary for the use, operation and Maintenance of the Owner C Elevators and the Owner C Elevator Shafts. For the avoidance of doubt, Owner A and Owner C hereby acknowledge and agree that Owner C shall have the rights set forth in this Section 4.2(a)(iv) twenty four (24) hours a day, seven (7) days a week.

(v) Owner B hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner B Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner C Building, (B) any Facilities located in the Owner B Property that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building, including, without limitation, the Owner C Easement Facilities and Owner C Owned Facilities; and (C) any other areas in the Owner B Property as to which an Easement for use or Maintenance has been granted to Owner C, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner C under Section 13.5.

(vi) Owner D hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Owner D Property, but only to the extent reasonably necessary for the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (A) the Owner C Building, (B) any Facilities located in the Owner D Property that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building, including, without limitation, the Owner C Easement Facilities and Owner C Owned Facilities; and (C) any other areas in the Owner D Property as to which an Easement for use or Maintenance has been granted to Owner C, or the obligation to perform a service has been imposed by Section 13.1, or the option to perform a service is available to Owner C under Section 13.6.

(vii) Owner D hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Open Space and for use of the Open Space for any uses permitted by Law, subject to restrictions and regulations imposed by Master Developer. Owner D shall keep the Open Space available for such use during at least the hours that the Plaza is available. Although it shall remain available for appropriate recreational uses, Owner D shall have the right to approve any other use of the Open Space during regular school hours, to the extent such other use would materially and adversely impact school activities. Notwithstanding the foregoing, or anything else set forth in this Declaration, the use of the Open Space and the hours the Open Space is available to the public shall comply with the requirements of the PD (subject to any amendment thereof pursuant to Section 14.5(c) of this Declaration).

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(viii) Owner D hereby grants to Owner C a non-exclusive easement for ingress and egress for Persons in, of, over, on, across and through the Staircase (pedestrian) and Roadway (pedestrian and vehicular). Owner D shall keep the Staircase available for such use during at least the hours that the Open Space is available and shall keep the Roadway available at all times.

(ix) Owner A hereby grants to Owner C a non-exclusive temporary easement in the air rights over the Owner A Building, solely for the operation of a construction crane as is reasonably required for construction of the Additional Floors Construction. The parties acknowledge that the rights granted to Owner C under the temporary construction easement in this Section 4.2(a)(ix) are limited to construction crane operation only and that this Section 4.2(a)(ix) is not intended to, nor shall it be deemed to grant Owner C any right to store vehicles, equipment or materials on the Owner A Property and Owner A shall have no obligation to provide security for persons, equipment, materials or vehicles used by Owner C in conjunction with the Additional Floors Construction. The parties acknowledge that the foregoing temporary construction easement shall cease and terminate upon the earlier of completion of construction of the Additional Floors Construction to the extent that the construction crane is no longer required, or the termination of this Declaration.

(b) Owner C Property Structural Support.

(i) Owner A hereby grants to Owner C a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner A Property for the support of (A) the Owner C Building, (B) any Facilities or areas located in the Owner A Property with respect to which Owner C is granted an Easement, and (C) any Owner C Owned Facilities.

(ii) Owner B hereby grants to Owner C a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner B Property for the support of (A) the Owner C Building, (B) any Facilities or areas located in the Owner B Property with respect to which Owner C is granted an Easement, and (C) any Owner C Owned Facilities.

(c) Use of Facilities Benefiting Owner C Building.

(i) Owner A hereby grants to Owner C a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner C Easement Facilities, for which an Easement is granted under Section 4.2(d) below) that are (A) located in the Owner A Property, including Owner C Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner C Building that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner C pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(ii) Owner B hereby grants to Owner C a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner C Easement Facilities, for which an Easement is granted under Section 4.2(d) below) that are (A) located in the Owner B Property, including

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Owner C Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner C Building that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner C pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(iii) Owner D hereby grants to Owner C a non-exclusive easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Owner C Easement Facilities, for which an Easement is granted under Section 4.2(d) below) that are (A) located in the Owner D Property, including Owner C Owned Facilities and Shared Facilities, and (B) connected to Facilities located in the Owner C Building that provide or are necessary to provide the Owner C Building with any utilities or other services necessary to the operation of the Owner C Building: (1) for the purpose of their intended use; and (2) to permit the exercise of the rights of self-help granted to Owner C pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(d) Owner C Easement Facilities.

(i) Owner A hereby grants to Owner C an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner C Easement Facilities located in the Owner A Property, subject to the rights of Owner A set forth in Section 13.5(a).

(ii) Owner B hereby grants to Owner C an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner C Easement Facilities located in the Owner B Property, subject to the rights of Owner B set forth in Section 13.6(a).

(iii) Owner D hereby grants to Owner C an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner C Easement Facilities located in the Owner D Property, subject to the rights of Owner D set forth in Section 13.6(a).

(e) Owner C Building Common Walls, Ceilings and Floors.

(i) Owner A hereby grants to Owner C a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner C Parcel and the Owner A Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner C Building.

(ii) Owner B hereby grants to Owner C a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner B Parcel and the Owner C Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner C Building.

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(f) Utilities.

(i) Owner A hereby grants to Owner C (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner C Property in those areas of the Owner A Property where such utilities are currently located or, subject to Owner A's approval, may hereafter be located.

(ii) Owner B hereby grants to Owner C (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner C Property in those areas of the Owner B Property where such utilities are currently located or, subject to Owner B's approval, may hereafter be located.

(iii) Owner D hereby grants to Owner C (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner C Property in those areas of the Owner D Property where such utilities are currently located or, subject to Owner D's approval, may hereafter be located.

(g) Owner C Building Encroachments.

(i) Owner A hereby grants to Owner C an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or construction above the Retail 1 Level that is not part of the foregoing construction, or if, by reason of any settlement or shifting of the Building, any part of the Owner C Building or Owner C Owned Facilities not currently located within the Owner A Parcel encroaches or shall hereafter encroach upon any of the Owner A Parcel. This Easement shall exist only so long as the encroachment portion of the Owner C Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(ii) Owner B hereby grants to Owner C an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner C Building or Owner C Owned Facilities not currently located within the Owner B Parcel encroaches or shall hereafter encroach upon any of the Owner B Parcel. This Easement shall exist only so long as the encroachment portion of the Owner C Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(iii) Owner D hereby grants to Owner C an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or if, by reason of any settlement or shifting of the Building, any part of the Owner C Building or Owner C Owned Facilities not currently located within the Owner D Parcel encroaches or shall hereafter encroach upon any of the Owner D Parcel. This Easement shall exist only so long as the



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encroachment portion of the Owner C Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(h) Exterior Maintenance.

(i) Owner A hereby grants to Owner C, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner A Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner C Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 4.2(h).

(ii) Owner B hereby grants to Owner C, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner B Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner C Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 4.2(h).

(iii) Owner D hereby grants to Owner C, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner D Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner C Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 4.2(h).

(i) Owner C Owned Facilities.

(i) Owner A hereby grants to Owner C an easement permitting the existence, attachment and Maintenance of Owner C Owned Facilities in the Owner A Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner A Property mutually acceptable to Owner A and Owner C.

(ii) Owner B hereby grants to Owner C an easement permitting the existence, attachment and Maintenance of Owner C Owned Facilities in the Owner B Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner B Property mutually acceptable to Owner B and Owner C.

(iii) Owner D hereby grants to Owner C an easement permitting the existence, attachment and Maintenance of Owner C Owned Facilities in the Owner D Property in locations now existing or in locations resulting from the construction of the Building or at locations in the Owner D Property mutually acceptable to Owner D and Owner C.

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(j) Shared Facilities.

(i) Owner A does hereby grant unto Owner C a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner C and its Permittees as is necessary or desirable for the use and operation of the Owner C Building by Owner C (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner C to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 4.2(j)(i), Owner C shall have the right (but not be obligated) to enter the Owner A Building at all reasonable times accompanied by a representative of Owner A (it being agreed that in either the event of an Emergency Situation or if Owner A declines to have a representative present, then Owner C, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner A) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner C shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Owner A Building in the exercise of the foregoing rights of Owner C. The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Owner A, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner A as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down of the Owner A Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner C is responsible pursuant to this Declaration.

(ii) Owner B does hereby grant unto Owner C a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner C and its Permittees as is necessary or desirable for the use and operation of the Owner C Building by Owner C (the foregoing to include the right to maintain any ductwork, wiring, equipment or other connections through the Common Walls, Floors and Ceilings as are necessary or appropriate to enable Owner C to maintain and continue to use and connect to the Shared Facilities). In furtherance of the rights under this Section 4.2(j)(ii), Owner C shall have the right (but not be obligated) to enter the Owner B Building at all reasonable times accompanied by a representative of Owner B (it being agreed that in either the event of an Emergency Situation or if Owner B declines to have a representative present, then Owner C, its agents, contractors or their respective employees shall not be required to be accompanied by a representative of Owner B) for the purpose of (x) obtaining necessary access to the Shared Facilities and/or (y) facilitating the use or operation of the Shared Facilities; provided, however, that Owner C shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Owner B Building in the exercise of the foregoing rights of Owner C. The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Owner B, to schedule and temporarily shut down the Shared Facilities (which shall be shut down in cooperation with Owner B as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down of the Owner B Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Owner C is responsible pursuant to this Declaration.

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(iii) Owner D does hereby grant unto Owner C a non-exclusive easement with respect to Persons, material and equipment to permit the continued use, operation of the Shared Facilities and the Maintenance of connections to the Shared Facilities by Owner C and its Permittees as is necessary or desirable for the use and operation of the Owner C Building by Owner C (the foregoing to include the right to maintain any ductwork, wiring and equipment as are necessary or appropriate to enable Owner C to maintain and continue to use and connect to the Shared Facilities). The foregoing shall include, without limitation, the right to schedule and temporarily shut down the Shared Facilities in connection with the Maintenance of the Shared Facilities for which Owner C is responsible pursuant to this Declaration.

(iv) This Section 4.4(j) does not apply to the portions of the Parking Garage used for parking purposes, easements for which are set forth in Section 4.4(k).

(k) Parking.

(i) Owner A hereby grants to Owner C a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner A Property used for parking purposes.

(ii) Owner B hereby grants to Owner C a non-exclusive easement for parking purposes, and related ingress and egress, for Persons and vehicles in, over, on, across and through the portions of the Parking Garage on the Owner B Property used for parking purposes.

## ARTICLE 5

### EASEMENTS APPURTENANT TO OWNER D PROPERTY

5.1. In General. For purposes of this Article 5, the following shall apply:

(A) Owners A, B and C have granted, reserved, declared and created certain Easements more particularly described in this Article 5. The Easements in this Article 5 shall bind and be enforceable against Owners A, B and C and their respective Successors, grantees and assigns with respect to portions of the Property that they own.

(B) The Easements granted by this Article 5 shall benefit Owner D and its Successors, grantees, assigns and Permittees which own the Owner D Parcel or any interest therein; provided, however, that its Permittees shall be benefited only to the extent such benefits are granted by Owner D.

(C) The Easements granted by this Article 5 shall bind and burden (i) each respective Owner's Property to the extent such Easements are granted by each respective Owner (the Property owned by any such granting Owner shall, for the purposes of this Article 5, be deemed to be the servient tenement). Where only a portion of the Property of an Owner is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

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(D) The Easements granted by this Article 5 are appurtenant to and shall benefit the Owner D Property, which shall, for the purposes of this Article 5 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Owner D Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Owner D Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Declaration, all Easements granted under this Article 5 are irrevocable and perpetual in nature.

(F) In exercising its rights created by an Easement granted under this Article 5, the Owner of the Owner D Property benefited by the Easement shall exercise commercially reasonable efforts to minimize the impact of its exercise on the Owner of the portion of the Property burdened by the Easement, taking into consideration the impact of any disruption on the Owner of the portion of the Property burdened by the Easement.

(G) The Owners granting Easements under this Article may: (1) in connection with the Additional Floors Construction, School Construction, Maintenance, repair or restoration of their respective Building, or (2) in an Emergency Situation; or (3) to prevent a dedication of or accruing of rights by the public in and to the use of any of their respective Property, temporarily prevent, close-off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the Owner benefited by such Easement and only with the approval of such benefited Owner. In no event shall access to the Plaza or the Owner A Building, the Owner B Building, or the Owner C Building be unreasonably restricted without the consent of the Owner of the affected Parcel. The Owners granting Easements under this Article may, from time to time, impose: (A) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Property owned by such Owner and described in this Article 5, including establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and (B) reasonable security controls consistent with the use of the Property of such granting Owner and any overall security system for such Property; provided, however, in no event shall such Owner impose any limitations, security controls or systems which would restrict or limit Owner D and its Permittees access to and use of any Easements through which unrestricted vehicular and pedestrian ingress and egress is required to be available for use by Owner D and its Permittees pursuant to any express provisions of this Article 5. In imposing any such limitations or controls, such granting Owner shall take into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Owner D's needs and requirements.

(H) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this Article 5 shall constitute Arbitrable Disputes.

(I) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement as and only to the extent reasonably necessary for the Additional Floors Construction, School Construction or Maintenance of the Property of the Owner of the servient tenement, for exercise of rights of self-

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help granted under Section 17.9 and its rights under Article 16 or Article 21, or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted. Any non-exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient tenement for all uses which do not interfere with or materially adversely affect the right of the Owner of the dominant tenement.

(J) Notwithstanding anything to the contrary set forth in this Declaration, including but not limited to this Article 5, Owner D shall have no rights to use any Shared Facilities except with respect to the Plaza, Roadway, Open Space and Staircase and shall have no easements except with respect to the use of the foregoing and except for the easements expressly set forth in Section 5.2.

(K) If in exercising its rights created by an Easement granted under this Article, an Owner shall damage the improvements of another Owner, it shall, subject to Section 15.6, promptly repair such damage.

5.2. Grant of Easement. The following Easements in favor of the Owner D Property are hereby granted:

(a) Intentionally Omitted.

(b) Owner D Property Structural Support.

(i) Owner A hereby grants to Owner D a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner A Property for the support of the Owner D Building.

(c) Intentionally Omitted.

(d) Owner D Easement Facilities.

(i) Owner A hereby grants to Owner D an exclusive easement for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) and use of the Owner D Easement Facilities located in the Owner A Property, subject to the rights of Owner A set forth in Section 13.6(a), it being agreed, however, that the only Owner D Easement Facilities shall be the easement for structural support set forth in Section 5.2(b).

(e) Owner D Building Common Walls, Ceilings and Floors.

(i) Owner A hereby grants to Owner D a non-exclusive easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the boundaries of the Owner D Parcel and the Owner A Parcel, which also serve as Common Walls, Ceilings or Floors for the Owner D Building, it being agreed, however, that the only easement being granted to pursuant to this Section 5.2(e) relates to common walls.

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(f) Utilities.

(i) Owner A hereby grants to Owner D (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner D Property in those areas of the Owner A Property where such utilities are currently located or, subject to Owner A's approval, may hereafter be located.

(ii) Owner B hereby grants to Owner D (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner D Property in those areas of the Owner B Property where such utilities are currently located or, subject to Owner B's approval, may hereafter be located.

(iii) Owner C hereby grants to Owner D (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for utility purposes required by the Owner D Property in those areas of the Owner C Property where such utilities are currently located or, subject to Owner C's approval, may hereafter be located.

(g) Owner D Building Encroachments.

(i) Owner A hereby grants to Owner D an easement permitting the existence of minor encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction or construction above the Retail 1 Level that is not part of the foregoing construction, or if, by reason of any settlement or shifting of the Building, any part of the Owner D Building not currently located within the Owner A Parcel encroaches or shall hereafter encroach upon any of the Owner A Parcel. This Easement shall exist only so long as the encroachment portion of the Owner D Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged unless Owner A provides prior written consent in its sole and absolute discretion.

(ii) Owner B hereby grants to Owner D an easement permitting the existence of minor encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction, or if, by reason of any settlement or shifting of the Building, any part of the Owner D Building not currently located within the Owner B Parcel encroaches or shall hereafter encroach upon any of the Owner B Parcel. This Easement shall exist only so long as the encroachment portion of the Owner D Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged unless Owner B provides prior written consent in its sole and absolute discretion.

(iii) Owner C hereby grants to Owner D an easement permitting the existence of minor encroachments if such encroachments presently exist or are replaced in the same location or result from the Additional Floors Construction or School Construction, or if, by reason of any settlement or shifting of the Building, any part of the Owner D Building not currently located within the Owner C Parcel encroaches or shall hereafter encroach upon any of the Owner C Parcel. This Easement shall exist only so long as the encroachment portion of the

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Owner D Building or such Facilities continues to exist, or replacements are made in the same location that do not enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged unless Owner C provides prior written consent in its sole and absolute discretion.

(h) Exterior Maintenance.

(i) Owner A hereby grants to Owner D, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner A Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner D Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 5.2(h).

(ii) Owner B hereby grants to Owner D, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner B Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner D Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 5.2(h).

(iii) Owner C hereby grants to Owner D, to the extent needed, a non-exclusive easement for ingress and egress of Persons, machines, materials and equipment outside the Owner C Building to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade of the Owner D Building. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 5.2(h).

(i) Parking.

(i) Owner A grants to Owner D a non-exclusive easement for 50 monthly unreserved parking spaces in the portion of the Parking Garage on the Owner A Property pursuant to the Parking Agreement. Owner A shall nevertheless remain responsible for its percentage of Operating Expenses (and Net Capitalized Cost of Replacement) related to the Parking Garage set forth in Exhibit 13.1. Owner D will have no obligation to pay any expenses associated with the Parking Garage except as set forth in the Parking Agreement. Owner D shall have the right to terminate this easement if the Parking Agreement is terminated pursuant to its terms, including but not limited to Section 13 thereof; provided, however, that, if individual users violate the terms and conditions of the Parking Agreement without the authorization of Owner D or the school tenant, Owner A shall have the rights set forth in the Parking Agreement with respect to such individual users, and Owner D shall be liable to Owner A for the acts of such individual users, as more fully set forth in Section 10 of the Parking Agreement, but such acts (without the authorization of Owner D or the school tenant), shall not give Owner A the right to terminate this easement.

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## ARTICLE 6

### OWNER C ADDITIONAL FLOORS CONSTRUCTION

6.1. Initial Construction of Owner C Building Prior to Effective Date. The Owners acknowledge and agree that the construction on the Owner C Property prior to the Effective Date was limited to construction of certain footings and caissons for the Owner C Building, and that such construction did not include construction of the Owner C Building above the Retail 1 Level or many of the Facilities that are necessary to serve the Owner C Building and that are intended to function independently of the Facilities that serve the Owner A Property, the Owner B Property and the Owner D Property.

6.2. Additional Floors Construction. Owner A, Owner B and Owner D acknowledge and agree that Owner C shall have the right (but not the obligation), from time to time, to the extent permitted by applicable Laws, to construct the Additional Floors Construction on the following terms and conditions:

(a) In performing such Additional Floors Construction, Owner C shall: (i) perform all work in a good and workmanlike manner; (ii) comply with all Laws, including, without limitation, the City building code; and (iii) not adversely affect the structural safety or integrity of the Structural Supports, the Façade or any portion of the Owner A Building, Owner B Building or the Owner D Building.

(b) The Façade of the Additional Floors shall conform in appearance, style and specifications to requirements of the applicable zoning and building codes, but the other Owners shall have no rights to approve the plans for the Additional Floors Construction.

(c) Owner D acknowledges and agrees that any construction of the scope of the Additional Floors Construction will necessarily create noise, vibrations, particulates and dust infiltration and other disturbances and will occur during school hours, but Owner C shall, to the extent reasonably practicable, perform the Additional Floors Construction in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would unreasonably disturb an occupant or occupants of the Owner A Building, Owner B Building and the Owner D Building (it being acknowledged and agreed that construction in accordance with commercially reasonable practices shall not be deemed to be an unreasonable disturbance). Notwithstanding the foregoing, Owner C shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict Owner A's, Owner B's and Owner D's right to seek and obtain injunctive relief from unreasonable disturbances.

(d) Owner C may, subject to Section 6.2 (c), perform work during any hours permitted by applicable Law. Owner C shall use reasonable efforts to pursue the Additional Floors Construction with diligence after its commencement until it is completed, subject in any event to Unavoidable Delay.

(e) Applications for building permits to perform the Additional Floors Construction shall be filed and processed by Owner C without the joinder of Owner A, Owner B



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or Owner D in such application, unless the City or other government agency having jurisdiction thereof requires joinder of Owner A, Owner B and/or Owner D. Owner C shall send copies of any building permits to Owner A, Owner B and Owner D at their request. If joinder by Owner A, Owner B and/or Owner D is so required, Owner A, Owner B and Owner D shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, Owner C shall indemnify and hold harmless Owner A, Owner B and Owner D from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of Owner A's, Owner B's or Owner D's execution of the application, permit or other instrument. Owner D agrees, on behalf of itself and its tenant, that it will not oppose (and will, upon request, support) any applications for governmental approvals for the Additional Floors Construction and for any other residential construction or any Alterations that may be undertaken at the Property unless such proposed construction will violate the requirements of this Declaration.

(f) Owner C shall use reasonable efforts to include in any construction contract a provision pursuant to which the contractor: (i) recognizes the separate ownership of the Owner A Property, the Owner B Property and the Owner D Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act shall only be enforceable against the Owner C Property; or (ii) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

6.3. Temporary Construction Easement. For the avoidance of doubt, except for the temporary construction easement for construction crane operation granted by Owner A to Owner C pursuant to Section 4.2(a)(ix) of this Declaration, Owner A, Owner B and Owner C acknowledge and agree that neither Owner A nor Owner B has granted any temporary or permanent construction easement to Owner C under this Declaration with respect to the Additional Floors Construction, nor are Owner A and/or Owner B obligated to grant any temporary or permanent construction easement to Owner C with respect to the Additional Floors Construction. Except with respect to operation of the construction crane and pursuant to Section 4.2(a)(ix) and except as set forth below in this Section 6.3, all construction work, staging, equipment storage and the like related to the Additional Floors Construction shall be located on the Owner C Property or on such portion of the Adjacent Parcel Property that the Adjacent Parcel Owner may elect to encumber with a temporary easement for construction purposes for the benefit of Owner C, pursuant to a separate, recorded instrument executed by Adjacent Parcel Owner and Owner C. Owner D shall grant to Owner C for the Additional Floors Construction, and to Owner A and Owner B with respect to any Alterations on the Owner A Parcel or Owner B Parcel, such temporary access easements as shall be necessary to traverse the Owner D Parcel for purposes of construction easements, including but not limited to an easement for construction crane operation, as may reasonably be requested by Owner C and Owner A and Owner B, respectively, so long as such requested construction easements do not materially and adversely impact operations on the Owner D Property. The construction easements granted by Owner D to Owner C pursuant to the immediately preceding sentence shall terminate on the earlier to occur of the completion of the Additional Floors Construction or the termination of this Declaration, and any construction crane easements granted by Owner D pursuant to the immediately preceding sentence shall require that (a) any crane hoisting loads over the athletic

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fields shall be in accordance with permits issued by the City, and (b) the crane shall not hoist loads over the Owner D Building (which for purposes of this Section 6.3 does not include the athletic fields or other improvements on the Owner D Parcel other than the multi-level building which contains classrooms and ancillary rooms). Owner C will meet with Owner D prior to the start of construction on Owner C Parcel to review the location and hoisting plan for Owner C's crane (including the schedule of activities on the athletic fields). The position of the crane will be within vacated Taylor Street, and shall not materially and adversely impact operations on the Owner D Property (including Owner D's use of vacated Taylor Street). Using commercially reasonable practices, the hoisting of loads shall not occur over the athletic fields during school operations or over the roadways on the Owner D Parcel during period of student drop-off or pick-up. The easements granted pursuant to this Section 6.3 will not be deemed to grant Owner A, Owner B or Owner C any right to store vehicles, equipment or materials on the Owner D Property.

## ARTICLE 7

### SCHOOL CONSTRUCTION

7.1. School Construction. Owner D shall be obligated to construct or cause to be constructed the School Construction. The School Construction shall be performed on the following terms and conditions:

(a) In performing such School Construction, Owner D shall: (i) perform all work in a good and workmanlike manner; (ii) comply with all Laws, including, without limitation, the City building code; and (iii) not adversely affect the structural safety or integrity of the Structural Supports, the Facade or any portion of the Owner A Building, Owner B Building or the Owner C Building.

(b) The School Construction shall comply with requirements the PD. The Façade of the School Construction and all Shared Facilities on the Owner D Parcel shall be constructed in accordance with the approved plans and specifications described in Exhibit 7.1 (and amendments thereof and further iterations thereto). Any amendment of the PD or the applicable zoning code initiated by Parcel D Owner shall be initiated only with respect to Alterations after the initial School Construction and only if such amendment is not likely to have a material adverse impact on the other Parcels or other Owners in the reasonable judgment of Master Developer. In no event (whether by future amendment of the PD or zoning code or otherwise), either during the performance of the School Construction or thereafter, shall the location of the Building be changed from the location shown on the Site Plan; nor shall the FAR be changed from .83; nor shall the height be changed so as to exceed 36 feet, 10 inches (provided that the elevator overrun on the portion of the northwest corner of the Owner D Building shown on the Site Plan may be higher but shall not exceed 45 feet 6 inches) without in each case the approval of Master Developer in its sole discretion. Moreover, neither the Open Space nor the Staircase shall be changed in any way without the approval of Master Developer in its reasonable discretion. Measurements for the foregoing height restrictions shall be from grade (as defined in Chicago Zoning Ordinance 17-17-0265, as it may be amended from time to time).

(c) Owner A, Owner B and Owner C acknowledge and agree that any construction of the scope of the School Construction will necessarily create noise, vibrations,

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particulates and dust infiltration and other disturbances and will occur during normal business hours, but Owner D shall, to the extent reasonably practicable, perform the School Construction in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would unreasonably disturb an occupant or occupants of the Owner A Building, Owner B Building or the Owner C Building (it being acknowledged and agreed that construction in accordance with commercially reasonable practices shall not be deemed to be an unreasonable disturbance).

(d) Owner D shall pursue the School Construction with diligence after its commencement until it is completed. If the lease between Owner D and the school tenant is terminated after the commencement of the Construction Phase and prior to the Final Completion Date, each as defined in that certain Development Agreement dated December 13, 2013 among Owner D, McCaffery Interests, Inc. ("Developer" thereunder) and British Schools of America, LLC (except if such termination is directly or indirectly caused by a failure of such Developer to perform pursuant to such Development Agreement), then Owner D shall continue to fund costs as are necessary to complete the Open Space (also known as the park) as required under applicable zoning codes, including but not limited to the PD, and return the Property to a safe and usable condition, which obligation shall survive the termination of the Development Agreement.

(e) Applications for building permits to perform the School Construction shall be filed and processed by Owner D without the joinder of Owner A, Owner B or Owner C in such application, unless the City or other government agency having jurisdiction thereof requires joinder of Owner A, Owner B and/or Owner C. Owner D shall send copies of any building permits to Owner A, Owner B and Owner C at their request. If joinder by Owner A, Owner B and/or Owner C is so required, Owner A, Owner B and Owner C shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, Owner D shall indemnify and hold harmless Owner A, Owner B and Owner C from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of Owner A's, Owner B's or Owner C's execution of the application, permit or other instrument and Owner D shall pay any out of pocket expenses of Owner A, Owner B and Owner C arising out of Owner A's, Owner B's or Owner C's execution of the application, permit or other instrument.

(f) Owner D shall include in any construction contract a provision pursuant to which the contractor: (i) recognizes the separate ownership of the Owner A Property, the Owner B Property and the Owner C Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act shall only be enforceable against the Owner D Property; or (ii) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

7.2. No Temporary Construction Easement. All construction work, staging, equipment storage and the like related to the School Construction shall be located on the Owner D Property or on such portion of the Adjacent Parcel Property that the Adjacent Parcel Owner may elect to encumber with a temporary easement for construction purposes for the benefit of Owner D, pursuant to a separate, recorded instrument executed by Adjacent Parcel Owner and

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Owner D. However, Owner A, Owner B and Owner C shall grant to Owner D for the School Construction such construction easements as may reasonably be requested by Owner D, so long as such requested construction easements do not materially and adversely impact operations on the Property of such other Owners.

## ARTICLE 8

### INCORPORATION OF ADJACENT PARCEL PROPERTY

8.1. Election. Master Developer shall have the right, in its sole and absolute discretion, by notice to the other Owners and with the written approval of Adjacent Parcel Owner to incorporate the Adjacent Parcel Property into the Property so that the incorporated property or properties shall be subject to this Declaration.

8.2. Consequences of Incorporation. Master Developer shall have the right to amend this Agreement in a reasonable manner to accommodate the incorporation referred to in Section 8.1 without the consent of any other Owner; provided, however, that if the Property of an Owner is materially and adversely affected by the amendment of any provision, such Owner shall have the right to consent to the amendment of such provision. Without limiting the generality of the foregoing, any such amendment may include reasonable revisions to cost sharing provisions and easements.

## ARTICLE 9

### PARKING GARAGE INCOME

9.1. Owner A. Owner A shall be entitled to all Parking Garage Income attributable to charges to parkers using the Owner A Property. Owner A shall be entitled to establish such charges and revise them from time to time.

9.2. Owner B. Owner B shall be entitled to all Parking Garage Income attributable to charges to parkers using the Owner B Property. Owner B shall be entitled to establish such charges and revise them from time to time.

9.3. Owner C. Owner C shall be entitled to all Parking Garage Income attributable to charges to parkers using the Owner C Property. Owner C shall be entitled to establish such charges and revise them from time.

9.4. Owner D. Owner D shall be not be entitled to any Parking Garage Income; provided, however, that Owner D will be entitled to collect parking charges from persons who are permitted users of the Garage pursuant to the Parking Agreement and are utilizing Owner D's parking rights under Article 5.

9.5. Parking Operator and Parking Rules and Regulations. Master Developer shall have the right to retain, and thereafter replace from time to time, a parking operator for the management and operation of the Parking Garage. Amounts paid by Master Developer to the parking operator shall be included in Operating Expenses. Master Developer shall have the right to promulgate reasonable rules and regulations relating to the operation of the Parking Garage,

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which rules and regulations shall be binding upon all Owners and Occupants and shall be subject to all applicable Laws. Such rules shall not impose any material adverse restrictions on the rights of any Owner without its consent. Such rules and regulations may, however, include provisions relating to the determination of whether a parker is using the Owner A Property, the Owner B Property, or the Owner C Property (or some combination of the foregoing) for purposes of allocating Parking Garage Income and provisions relating to the exclusive use of portions of the Parking Garage.

## ARTICLE 10

[Omitted]

## ARTICLE 11

### STANDARDS FOR CONSTRUCTION

#### 11.1. Performance Standards for Construction.

(a) Prior to commencement of any construction permitted hereunder to be undertaken by one Owner within or affecting the Property of the other Owner, but specifically excluding the Additional Floors Construction and the School Construction and any Alterations (which are governed by the provisions of Article 21), (a) the Owner causing such construction (the "Constructing Owner") shall give the Owner of the Property in which the construction is to be performed (the "Non-Constructing Owner") not less than ten (10) business days prior written notice of such planned work, (b) the Constructing Owner shall be responsible for obtaining all permits and approvals from applicable federal, state and local authorities for such construction, (c) the Constructing Owner shall diligently perform such construction in such manner as to reasonably minimize interference with the use and enjoyment of the Building of the Non-Constructing Owner and its Permittees and (d) the Constructing Owner shall provide evidence of the insurance required under Section 15 hereof. In no event shall a Constructing Owner do or permit any act which would adversely affect the structural safety or integrity of a Building.

(b) Except to the extent attributable to an Owner's failure to pay its share of the cost of any such construction (to the extent that an Owner has such obligation to pay a share of the cost of such construction), the Owners agree that if any mechanics' lien or other statutory lien shall be filed against all or any part of another Owner's Parcel by reason of work, labor, services or materials supplied in connection with any construction by a Constructing Owner, the Constructing Owner shall cause to be paid and discharged, or cause to be bonded over, the lien of record before the first to occur of (i) sixty (60) days after the filing thereof, (ii) ten (10) days after notice of commencement of foreclosure proceedings of such lien, (iii) the time set forth in any Mortgage applicable to such portion of a Parcel on which the lien has been filed or (iv) within thirty (30) days after the demand of the other Owner if such other Owner is then engaged in bona fide discussions for the sale, assignment or financing of its interest in any part of its Property. Nothing contained herein shall restrict the right of an Owner to contest the validity, amount or applicability of any such lien by and in accordance with all applicable Laws and any Mortgage encumbering such Owner's interest in the Property with diligence and in good faith; provided, however, that the Owner causing such work to be performed which gave rise to the lien shall cause the lien(s) to be bonded over pending resolution of the dispute which resulted

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in the lien. The Constructing Owner shall obtain interim lien waivers from its contractor and subcontractors during the course of any work performed or materials supplied on another Owner's Building for or at the direction of such Owner and shall obtain final lien waivers from the contractor and all subcontractors upon completion of the work or delivery of such materials.

(c) If an Owner commences construction at its Property and thereafter elects to stop or temporarily delay such construction for a period in excess of six (6) months, the Constructing Owner shall take such actions as are necessary to cause the portion of the Property on which such construction was being performed to be restored to a clean, sightly and safe condition.

11.2. Construction Contracts. The Constructing Owner shall include in any construction contract for any construction performed pursuant to this Declaration a provision pursuant to which the contractor: (i) recognizes the separate ownership of the respective Parcels and/or Buildings and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (said Act and any successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the Parcel of the Constructing Owner; and (ii) agrees, to the extent permitted by Law, that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 25 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

11.3. Restoration Obligations. Upon the completion of any construction performed within another Owner's Building pursuant to this Article 11, the Constructing Owner shall restore any damage or modification to a Building caused by such construction in such a manner as to restore such Building to substantially the same condition which existed immediately prior to the commencement of such construction (specifically excluding any modifications, changes or structures built or made pursuant to construction performed by an Owner as contemplated by this Declaration). To the extent that the Constructing Owner fails to restore the Non-Constructing Owner's Building as required herein to a condition as good as its previous condition, the Non-Constructing Owner may assess the actual costs incurred by the Non-Constructing Owner to effect such restoration against the Constructing Owner's Property.

## ARTICLE 12

### STRUCTURAL SUPPORT

12.1. Structural Safety and Integrity. No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Structural Supports, the Facade, the Level 9 Roof or any portion of a Building.

#### 12.2. Construction of Support.

(a) The Owner responsible for any adverse effect on the structural safety or integrity of any portion of a Building shall commence the construction of all necessary remedial structural support within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by the Architect and the other

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Owner(s) of such Building. The responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs. The provisions of Sections 16.2 and 16.3, and not this Article 12, shall apply if the adverse effect of the structural safety or integrity of a Building results from a fire or other casualty.

(b) The construction of such necessary remedial structural support shall be performed by a contractor or contractors jointly selected by the Owners of the affected Building (with the advice of the Architect). If such Owners fail to agree upon the selection of a contractor or contractors, the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this Article 12, provision or construction of necessary remedial structural support shall also include any Maintenance required to remedy or prevent any adverse effect on the structural integrity or safety of a Building. Costs incurred under this Section 12.2(b) shall be shared by the Owners pro rata to the square footage of the ownership of the affected Building.

12.3. Effect of Delay. If delay in constructing necessary remedial structural support would endanger the structural safety or integrity of any portion of a Building or responsibility for providing structural support cannot readily be determined or is disputed, and it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner of the portion of such Building in which the reduction occurred or is occurring shall, upon not less than ten (10) Business Days' advance written notice to the other Owners of such Building and/or the Owners of any other affected Building (except that such advance written notice shall not be required in an Emergency Situation), provide necessary remedial structural support as and wherever required, or the Owners shall 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 other Owner's provision of any necessary remedial structural support.

## ARTICLE 13

### MAINTENANCE OBLIGATIONS AND SERVICES TO OTHER OWNERS

13.1. Services and Maintenance. Subject to the obligations of each Owner with respect to the Maintenance of its respective Property, as provided in Article 16 below, and subject to the provisions of the Exhibits to this Section 13.1 listed below regarding the Facilities listed below, Master Developer shall Maintain all of Shared Facilities (but shall not be responsible for Maintenance of Shared Facilities on other Parcels unless and until it shall have received notice from another Owner as to the need for such Maintenance).

(a) AB Common Stairwells. Maintenance of the AB Common Stairwells upon the terms and conditions set forth in Exhibit 13.1(a).

(b) AC Common Stairwells. Maintenance of the AC Common Stairwells upon the terms and conditions set forth in Exhibit 13.1(b).

(c) Common Walls, Floors and Ceilings. Maintenance of the Common Walls, Floors and Ceilings upon the terms and conditions set forth in Exhibit 13.1(c).

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(d) Façade. Maintenance of the Façade upon the terms and conditions set forth in Exhibit 13.1(d).

(e) Shared Fire Pumps, Fire Alarm System, and Shared Sprinkler System. Maintenance of the Shared Fire Pumps, Fire Alarm System, and Shared Sprinkler System upon the terms and conditions set forth in Exhibit 13.1(e).

(f) Parking Garage Ramp, Retail Corridors and Miscellaneous Owner A Facilities. Maintenance of the Parking Garage Ramp, Retail Corridors and Owner A Elevator 3 and 4 and Owner A Elevator 3 and 4 Shaft; Owner A Elevator 6 Machine Room; Owner A Elevator 18, Owner A Elevator 18 Shaft, and Owner A Elevator 18 Machine Room; and Owner A Restaurant Mechanical Closets upon the terms and conditions set forth in Exhibit 13.1(f).

(g) Owner B Loading Docks. Maintenance of the Owner B Loading Docks upon the terms and conditions set forth in Exhibit 13.1(g).

(h) Owner B Trash Containers. Maintenance of the Owner B Trash Containers upon the terms and conditions set forth in Exhibit 13.1(h).

(i) P3 Level Service Drive. Maintenance of the P3 Level Service Drive upon the terms and conditions set forth in Exhibit 13.1(i).

(j) Owner C Elevators and Owner C Elevator Shafts. Maintenance of the Owner C Elevators and the Owner C Elevator Shafts upon the terms and conditions set forth in Exhibit 13.1(i).

(k) Plaza. Maintenance of the Plaza upon the terms and conditions set forth in Exhibit 13.1(k).

(l) Intentionally Omitted.

(m) Open Space. Maintenance of the Open Space upon the terms and conditions set forth in Exhibit 13.1(m).

(n) Shared Electrical Supply System. Maintenance of the Shared Electrical Supply System upon the terms and conditions set forth in Exhibit 13.1(n).

(o) Shared Facilities Mechanical Rooms. Maintenance of the Shared Facilities Mechanical Rooms upon the terms and conditions set forth in Exhibit 13.1(o).

(p) Shared Gas Supply System. Maintenance of the Shared Gas Supply System upon the terms and conditions set forth in Exhibit 13.1(p).

(q) Shared Cooling Tower. Maintenance of the Shared Cooling Tower upon the terms and conditions set forth in Exhibit 13.1(g).

(r) Shared Mechanical Chases. Maintenance of the Shared Mechanical Chases upon the terms and conditions set forth in Exhibit 13.1(r).



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(s) Shared Sanitary Sewer System. Maintenance of the Shared Sanitary Sewer System upon the terms and conditions set forth in Exhibit 13.1(s).

(t) Shared Security System. Maintenance of the Shared Security System and Shared Security System Room upon the terms and conditions set forth in Exhibit 13.1(t).

(u) Shared Storm Sewer System. Maintenance of the Shared Storm Sewer System upon the terms and conditions set forth in Exhibit 13.1(u).

(v) Shared Water Supply System. Maintenance of the Shared Water Supply System upon the terms and conditions set forth in Exhibit 13.1(v).

(w) East and West Loading Dock Service Corridor. Maintenance of the East and West Loading Dock Service Corridors upon the terms and conditions set forth in Exhibit 13.1(w).

(x) Parking Garage. Maintenance of the Parking Garage upon the terms and conditions set forth in Exhibit 13.1(x).

(y) Staircase. Maintenance of the Staircase upon the terms and conditions set forth in Exhibit 13.1(y).

(z) Roadway. Maintenance of the Roadway upon the terms and conditions set forth in Exhibit 13.1(z).

## 13.2. [Intentionally Omitted].

13.3. Obligation to Furnish Services. Each Owner obligated to perform services hereunder shall make a good-faith effort to operate its Facilities and furnish (or cause to be furnished) all services required under this Article 13 in a manner consistent with its intended respective use as commercial or residential property (as applicable) and the level of operation and management of comparable properties in downtown Chicago, Illinois. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 13. Each Owner reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation, provided, however, that in order to minimize any disruption in services or use of Facilities or Easements as to which another Owner has rights of use or access on a twenty-four (24) hour per day, seven (7) day a week basis, each Owner providing services shall cooperate with the other Owners as to timing, nature and manner of any limitation of access, or interruption or stoppage of services. An Owner providing services under this Article 13 shall not be liable for interruption or inadequacy of service or loss or damage to property or business arising out of such interruption or inadequacy, except as may be provided in Section 13.6. Each Owner who is obligated to maintain, repair and replace any Facilities under Sections 16.1 which are connected to other Facilities in a Building, the responsibility for whose Maintenance is another Owner's under this Article 13, shall perform its obligations under Sections 16.1 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under Article 13. Where an exception exists to an Owner's

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obligation to perform Maintenance of Facilities described in an Exhibit to Article 13, such exception has been set forth in the Exhibit.

13.4. No Obligation to Furnish Services. In no event shall an Owner be obligated under Article 13 for Maintenance of the Easement Facilities of another Owner.

13.5. Payment for Services. Payment for services rendered pursuant to this Article 13 and other charges and fees related to such services, including overhead and supervision fees, or the fees of a professional property manager, shall be made in accordance with the terms and provisions of Exhibit 13.5 attached hereto.

13.6. Owner's Failure to Perform Services.

(a) If an Owner shall fail to perform as required by the terms and conditions of this Article 13 (except when such failure is caused by another Owner or by Unavoidable Delay or except when an Owner obligated to perform the service is entitled to discontinue such service pursuant to Sections 13.3 or 13.4 hereof) and such failure shall continue for a period of ten (10) days after receipt of written notice thereof to the Defaulting Owner from the Creditor Owner, the Creditor Owner shall have the right to perform the same (without limiting any other rights or remedies of such Owner) until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Building or any of its Occupants.

(b) During any period in which the Creditor Owner is performing pursuant to Section 13.6(a) hereof, the Defaulting Owner shall make payments to the Creditor Owner as provided in Exhibit 13.5.

(c) If a dispute exists as to whether an Owner has failed to perform as required by the terms and conditions of this Article 13, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 18 if not resolved within thirty (30) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate an Owner's rights under Section 14.3(a) and (b).

13.7. Data Unavailable from Metering. Where the Allocated Share of the cost of a service under Article 13 is based on usage recorded by meters or submeters, and if at any time the actual allocation of cost of service based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the Owner performing such service shall in good faith make such reasonable determination of costs based on historical data and usage, using such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the applicable Owners who are responsible for a portion of such usage, its determination in reasonable detail of estimated usage and the method for such determination at the time such Owner sends a Statement (as such terms are defined in Exhibit 13.5) or statement of Net Capitalized Cost of Replacement under Exhibit 13.5 relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that the estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties for such period; provided further, however, if the Owner receiving such notice, in good

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faith, disputes that the estimated usage has been determined reasonably, the receiving Owner shall so notify the determining Owner and the other Owners, if any. If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then any Owner may submit the question to the Architect or other expert agreed to by the parties for its advice. The Architect or other expert agreed to by the parties shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect or other expert. Subsequent failure to agree shall constitute an Arbitrable Dispute, if the amount involved exceeds \$5,000 (in 2013 Equivalent Dollars).

13.8. Replacement of Facilities. Subject to the terms of this Declaration, an Owner may, in replacing Facilities described in the Article 13 Exhibits, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better. Any Owner may correct the description of the Facilities or references to locations of Facilities described in the Article 13 Exhibits by notice to the other Owner if such correction is due to error in the description or due to the replacement of such Facilities.

## ARTICLE 14

### INDEMNIFICATIONS: COVENANTS OF OWNERS

14.1. Indemnity by Owners. Each Owner (hereinafter in this Section 14.1, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners (hereinafter in this Section 14.1, collectively, the "Indemnitee"): (A) from and against any and all claims, actions or proceedings, losses, liabilities, damages, judgments, costs and expenses (herein, a "Claim") against Indemnitee, which is asserted by or on behalf of any Person other than the Indemnitee: arising out of the Indemnifying Owner's grossly negligent use, exercise, Maintenance or enjoyment of an Easement, Easement Facility, Building, Property or Facility or portion of any of the foregoing; and (B) from and against all costs, reasonable attorneys' fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any Claim arising therefrom. In case any action or proceeding is brought against any Indemnitee by reason of any such Claim, Indemnifying Owner, upon notice from any such Indemnitee, covenants to resist or defend such Claim with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such Claim shall be presumed reasonably satisfactory to each such Indemnitee.

14.2. Liens. Every Owner (the "Liening Owner") shall remove before the first to occur of (i) sixty (60) days after the filing thereof, (ii) ten (10) days after notice of commencement of foreclosure proceedings of such lien, (iii) the time set forth in any mortgage or deed of trust applicable to an Owner's Property if such Owner's Property is affected or (iv) within thirty (30) days after the demand of an Owner if such other Owner's Property is affected and such other Owner is then engaged in bona fide discussions for the sale, assignment or financing of its interest in any part of its Property, any mechanics', materialmen's, manager's or broker's or any other similar lien arising by reason of the acts of the Liening Owner, its employees, agents, contractors and Occupants or any work or materials or services for which the Liening Owner, its employees, agents, contractors or Occupants has contracted: (A) against any other Owners' portion of the Building or Owned Facilities; or (B) against its own portion of the Building or

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Owned Facilities, if the existence or foreclosure of such lien against its own portion of the Building or Owned Facilities would materially and adversely affect any other Owner (such other Owner in subclause (A) or (B) being the "Impacted Owner"). The Liening Owner shall not be required to remove such lien within sixty (60) days after its filing pursuant to (i) above if within said sixty (60) day period: (I) such lien cannot be foreclosed; and (II) the Liening Owner: (x) shall in good faith diligently proceed to contest the same by appropriate actions or proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien; and (y) shall (unless other security already exists, such as a title indemnity fund for a Mortgagee) deliver to the Impacted Owner either, at the Impacted Owner's option: (a) cash or a surety bond from a responsible surety company acceptable to the Impacted Owner in an amount equal to one hundred twenty-five percent (125%) of the lien claim and all interest and penalties then accrued thereon or such related 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 (b) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company, the Impacted Owner and the Impacted Owner's Mortgagee. An endorsement in form and substance reasonably satisfactory to the Impacted Owner's Mortgagee by the Impacted Owner's title insurance company over such lien claim to the Impacted Owner's title insurance policy shall be deemed an indemnity reasonably acceptable to the Impacted Owner and satisfy the requirements of clause (II)(y) above. In any case, a Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure. If the Liening Owner fails to comply with the foregoing provisions of this Section 14.2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees and litigation expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under this Section 14.2.

#### 14.3. Compliance With Laws. Every Owner:

(a) shall comply with all Laws, if noncompliance by such Owner with respect to its portion of the Property or any part thereof or Owned Facilities or areas for which such Owner has been granted an exclusive easement would subject any other Owners or Occupants to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owners or Occupants or for a Building or would jeopardize any Owner's right to beneficially occupy or utilize its respective portion of a Building or any part thereof or Owned Facilities or any Easement (considering the time and circumstances), or would result in the imposition of a lien against any of the property of any other Owners;

(b) shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Property or any portion thereof or the requirements of any insurance coverage on any of the other Owner's portion of a Building or Owned Facilities, if noncompliance by it with respect to its respective portion of a Building or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by any other Owners or the premiums of any policy of insurance maintained by all Owners (unless the

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non-complying Owner pays all such increases), or (ii) render any other Owner's portion of a Building or Owned Facilities uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of a Building or Owned Facilities; and

(c) shall deliver to every other Owner, within ten (10) Business Days after receipt, a copy of any written report, citation or notice having an effect on or relating to compliance of such Owner's Property with Laws.

#### 14.4. Intentionally Omitted.

#### 14.5. Use

(a) No use shall be permitted in all or any portion of the Property which does not comply with Law, or would increase significantly the cost of insurance maintained by an Owner of any portion of a Building in which such use is contemplated.

(b) The following uses shall not be permitted in the Property without the consent of the Master Developer:

- (i) Any mortuary or funeral home;
- (ii) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;
- (iii) Any adult theater or live performance theater exhibiting nude or lewd performers or performances or lascivious behavior;
- (iv) Any carnival or flea market;
- (v) Intentionally omitted;
- (vi) Any off-track betting store or parlor;
- (vii) Any deep discount store;
- (viii) The use, presence or release of Hazardous Materials, except in the ordinary course of the permitted and usual business operations conducted thereon, provided that any such use shall at all times be in compliance with all applicable environmental laws;
- (ix) Any foreign governmental offices;
- (x) Industrial purposes;
- (xi) A gun shop or firing range;
- (xii) A salvage shop or pawn shop;

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- (xiii) For the purpose of manufacturing;
- (xiv) A methadone clinic or drug or alcohol dependency clinic; and
- (xv) Any other use inconsistent with comparable first-class mixed-use developments in a one-half mile radius of the Property, as reasonably determined by the Master Developer (it being agreed that a school is not inconsistent with such comparable first-class mixed-use developments).

(c) The Owner D Parcel shall be subject to the use restrictions on the Owner D Parcel in existence as of the Effective Date, which use restrictions are set forth on Exhibit 14.5. Additionally, the use of the Owner D Parcel shall at all times comply with any use restrictions in the PD. Owner D shall have the right to amend the use restrictions in the PD so long as such amendment affects only the Owner D Parcel. Notwithstanding any such amendment, the requirements of this Declaration (including but not limited to those set forth in Section 7.1(b)) shall remain in full force and effect, and Owner D shall continue to provide publicly accessible Open Space and, so long as the Open Space is elevated above grade (with any change in elevation being subject to the PD), a publicly accessible Staircase satisfying the requirements of this Declaration, including the location of such Facilities as set forth on the Site Plan, unless otherwise approved by Master Developer in its sole discretion. Owner A, Owner B and Owner C shall have the right to amend the PD without approval of Owner D unless such amendment shall have a material and adverse effect on the Owner D Parcel.

(d) Owner D agrees that the athletic fields on the Owner D Parcel (which shall be located as shown on the Site Plan) shall remain generally available for use by the community, but this requirement shall not be construed so as to prevent Owner D from promulgating reasonable rules and regulations with respect to the athletic fields, including hours for each activity thereon; provided, however, that in any event the athletic fields shall comply with the provisions of the PD relating thereto.

(e) Owner D shall not, and shall not permit its tenant to, formally challenge (or otherwise object to in any way) any application for a liquor license or similar request for a governmental approval by Owner A, Owner B or Owner C or any of their respective Occupants or proposed Occupants, including but not limited to a variance for alcoholic beverage sales relating to proximity of the facility conducting such sales to a school, so long as the proposed use would otherwise be permitted by Law if the request for governmental approval is granted.

## 14.6. Exterior Building Signage.

(a) Except as set forth in Section 14.6(c) hereof, no signage of any kind may be placed on any Building or be visible from the exterior of any Building without the consent of an Approving Party appointed by the Master Developer, which approval may be withheld in its sole and exclusive discretion. Any and all exterior Building signage must also comply with the following requirements:

- (i) all exterior building signs must comply with applicable Laws;
- (ii) all signs must be installed and operated in a first-class manner;

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- (iii) all signs must be professionally designed and fabricated; and
- (iv) interior and exterior sign illumination is permitted, provided it complies with applicable law.

(b) Any material change to any signage installed pursuant to this Section 14.6 shall also require the approval of the Approving Party appointed by the Master Developer. For purposes of this Section 14.6(b), a “material change” in signage means any change in the size or location of such signage on the applicable Building. For the avoidance of doubt, changing the colors or text on a sign panel approved pursuant to Section 14.6(a) hereof shall not be deemed to be a “material change” in such sign, provided the size of such sign is not altered.

(c) Owner B and Owner C, at their sole cost, may install and maintain the following sign on the exterior of the Roosevelt Collection Building: the name of the condominium associations, address of the Building or other ownership interests incorporated thereon at Owner B’s and Owner C’s reasonable discretion, provided such sign shall not have the name of any other party. Signage on the Building on the Owner D Property (as distinguished from signage on the Open Space, Staircase, Roadway and athletic fields [other than temporary signage on or relating to the athletic fields that describes the activities thereon, which need not be approved]) need not be approved by Master Developer, but such signage, in addition to satisfying the requirements in clauses (i)—(iv) of Section 14.6(a), shall comply with applicable Laws, the PD and the other applicable provisions of this Declaration. It is agreed that the signage depicted on Exhibit 14.6(c) has been approved by Master Developer and conforms to the requirements of clauses (ii)—(iv) of Section 14.6(a).

(d) Each Owner, at its sole cost, is responsible for any maintenance and repair of the Façade required due to the installation, removal or replacement of its respective signs. In all cases, the Façade shall be maintained in a safe, first-class order and condition.

**14.7. Environmental and Engineering Review.** Each Owner (“Inspecting Owner”) shall have the right in certain instances listed below to obtain from an environmental engineer or an inspecting architect or engineer of the Inspecting Owner’s choice and at the Inspecting Owner’s own cost and expense, an audit, review, assessment or report (each referred to as a “Review”) relating to the Property, which Review may include tests or inspections of each Owner’s portion of the Property as part of such Review. The Inspecting Owner shall use reasonable efforts to minimize the disruption of the other Owner’s operation of business or use in its portion of the Property and shall repair any damage to property of the other Owner caused by a Review. The instances when an Owner may obtain a Review necessitating tests or inspections of the other Owner’s portion of the Property are:

- (a) if the Inspecting Owner has entered into or will enter into a contract to sell or intends to finance or refinance its Property in which a requirement of said contract, financing or refinance is a Review (it being agreed that (x) a contract vendee or lender or potential lender in respect of an Owner’s Property may be designated by an Inspecting Owner as the party to perform a Review and (y) no such designation shall relieve the Inspecting Owner of the obligations set forth in this Section 14.7 in connection with such Review); or

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- or
- (b) if the Inspecting Owner's then current Mortgagee has requested a Review;
  - (c) if a Review is required by Laws; or
  - (d) if the Inspecting Owner, in good faith believes: (i) that the other Owner may have breached the provisions of Sections 14.3, 14.4 and 14.5 as it relates to the matters which could be disclosed by a Review or; (ii) that the Inspecting Owner may be adversely affected or subject to liability as a result of matters which could be disclosed by a Review.

14.8. Approving Party. Each Owner shall designate from time to time a representative (individually and collectively, the "Approving Party") to make decisions or give approvals pursuant to the terms of this Declaration. Where this Declaration requires a decision to be made by, or grants approval rights or discretion to, an Owner or Owners acting jointly, the Approving Party representing each such Owner shall meet and use good faith efforts to reach a conclusion. There shall be one Approving Party representing each Owner. Each Approving Party shall have absolute discretion to make the decisions or amend or terminate this Declaration pursuant to Section 27.4, Section 27.10 and Section 27.14. Each Owner shall, on its own or after request, designate its Approving Owner to the other Owners by written notice. Notwithstanding anything to the contrary in this Declaration (and without increasing the approval rights of Owner D set forth in this Declaration), the Approving Party designated by Owner D (and Owner D itself) shall not have any rights to approve any Alterations on any other Property if such Alterations are not likely to materially and adversely affect the Owner D Parcel or school activities thereon.

14.9. Environmental Contamination. If any environmental contamination is discovered in, on, under, about or above a Building, and such contamination predates the date hereof, the Owners of such Building shall share all costs of investigation, remediation, penalties and fines incurred or imposed as a result thereof pro rata based upon the square footage of the ownership of the Buildings.

14.10. Air Rights and Mineral Rights. Each Owner shall have the benefits and shall be responsible for the expenses with respect to any air rights located above its Building.

14.11. Subsequent Construction. Owner A, Owner B and Owner C acknowledge and agree that (i) Owner B shall not construct any additional floors on the Owner B Building and Owner D shall not construct any additional floors on the Owner D Building without the written consent of the Master Developer, which consent may be withheld in the Master Developer's sole and exclusive discretion; and (ii) except for telecommunication equipment and replacement equipment and Facilities for equipment and machinery existing as of the Effective Date or that is required in an Emergency Situation or is determined by the Master Developer to be necessary to serve the Owner A Building or the Owner B Building or the Owner C Building or the Owner D Building (or the Open Space) in the future, no Owner shall install additional equipment or Facilities on the roof of their respective Building without the consent of the other Owners (except that the consent of Owner D shall not be required).

14.12. New Easements. If, at any time, it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located or to be located as part of the Additional Floors Construction or School Construction or renovation of a



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Building in order to provide required utility service to any Buildings, the respective Owners of such Buildings, as the case may be, agree to grant such additional or relocated utility easements (at such location mutually agreed to by the affected Owner and requesting Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the granting Owner's Building for the purposes for which the granting Owner's Building is then being used, or if such use and enjoyment would be disturbed, no reasonable alternative is available; (2) no Owner shall be required to grant an easement which would convert space otherwise available for commercial use unless such relocation or additional easements are required by Law and no other space is reasonably available, and any such granting Owner is equitably compensated by the benefited Owner for the value of such converted space, and (3) the benefited Owner shall pay the granting Owner's reasonable costs or expenses in connection with granting such easement and restoring or repairing any property damaged by the installation of a Facility on the easement.

## ARTICLE 15

### INSURANCE

15.1. Insurance Required. Each Owner (except as otherwise set forth in Exhibit 13.1) shall procure and maintain the following insurance:

(a) Real and Personal Property. Each Owner shall keep its respective Building and respective Owned Facilities insured for no less than "all risk" coverage on real property and personal property (exclusive of foundations and footings) owned by such Owner used in the operation of its Building for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof with an endorsement waiving coinsurance. Each Owner may, in its discretion, include or exclude from such insurance coverage improvements or betterments and personal property owned by Occupants of its respective Property. Each Owner shall separately insure on an "all risk" basis, its loss of rental income (if applicable) or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of similar multi-use commercial and residential buildings in the City, but in no event shall that amount be less than twelve (12) months of net income, plus ongoing operating expenses and any additional extra expenses incurred as a result of a covered loss during that time, or as may be required by any Mortgagee to said Owner, and shall pay all premiums for such coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal. Insurance coverage required by this paragraph shall also include boiler and machinery coverage, demolition and increased cost of construction and, to the extent available on commercially reasonable terms, terrorism coverage (certified and non-certified acts of terrorism) all in amounts appropriate for the property.

(b) General Liability and Umbrella/Excess Liability. Each Owner shall insure against liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Property, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration including, but not

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limited to, those indemnity obligations contained herein), with coverage in such amounts as may from time to time be carried by prudent owners of similar buildings in the City, but in all events for limits, as to each Owner and its portion of the Building, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an amount not less than \$50,000,000 umbrella coverage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

(c) **Builder's Risk.** During any period of construction, renovation or Work, each Owner performing such construction, renovation or Work shall carry or shall cause its contractors to carry "all risk" builder's risk insurance (including loss of income and "soft costs") for not less than the completed value of the work then being performed by such Owner or Owners under Article 6, Article 7, Article 12, Section 16.2, Section 16.3 or Section 20.4 or for any Alterations which require another Owner's consent under Section 21.1. Such insurance shall include coverage for items stored off-site and items in transit or an amount sufficient to cover fully any loss. Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of similar buildings in the City. Coverage under this Section 15.1(c) shall only be required to the extent such coverage is not already provided within the property coverage under Section 15.1(a).

15.2. **Insurance Companies.** Unless the Owners otherwise agree in writing, with respect to each of the insurance policies required in Section 15.1(a) and Section 15.1(c) hereof (with respect to work performed under Section 12.2(b), Section 16.3 and Section 20.4) the interest of all Owners shall be insured by the same insurance companies where commercially feasible, provided such insurance company(ies) are within the guidelines of the Mortgagee(s) for such Owner(s). Such policies may be issued in combination covering one or several items and covering jointly the interests of each Owner where allocable by law. In the case of any insurance policy covering the Owners jointly, the insurance company shall apportion the premium based on the manner in which the insurance company has underwritten the risks and if the insurance company does not or cannot apportion the premium on such basis, the Owners agree that the Approved Appraiser shall apportion the premium based on the Approved Appraiser's opinion of the appraised value of each Owner's Property. Policies not required to be a single joint policy may be joint or may be issued separately by the same insurance company with respect to each Owner's interest in a Building. If separate policies are issued, the Owner shall insure that they are coordinated so that there are no gaps in coverage, and so that the insurance company agrees that the entire Building will be covered among the Owners' separate policies. The Owners will consult with one another at least annually (and may retain a consultant to advise them, the cost of employing such consultant to be shared in the same manner as provided in Section 15.4) concerning the advantage and disadvantages to each Owner and the respective Building as a whole of separate insurance policies as opposed to joint policies, where separate policies are permitted or as may be required by Mortgagees, and will give careful consideration to these matters before choosing to have separate policies. In the event the Owners cannot agree upon the insurance companies to provide the insurance required under Section 15.1(c) (where required to be a joint policy), in the case of a joint policy, or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall constitute an Arbitrable Dispute. Insurance policies required by Section 15.1 hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current

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Policyholder's Alphabetic and Financial Size Category Rating of not less than A:X (or such rating as the Owners may agree to or as may be required by any Mortgagee to an Owner) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. If separate insurance companies provide the coverages required hereunder, then the Owners shall insure that all such companies coordinate their coverages with the other, to insure that there are no gaps in coverage, and any disputes regarding coverages will not delay adjustments of loss and payments to the insureds.

15.3. Insurance Provisions. Each policy described in Section 15.1 hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) with respect to the Building shall insure as "named" insureds the Owner responsible for such Building, (except that the Owners other than the primary insured shall be "additional" insureds under policies described in Section 15.1(b)); (iii) shall provide (except for liability insurance described in Section 15.1(b), for which it is inapplicable) 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 at a 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, except for liability insurance required by Section 15.1(b) and loss of rental income under Section 15.1(a), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article 23 hereof unless such other Loss Payable provision is required by a Mortgagee, unless the Owners of the affected Building otherwise agree (and the Owners hereby agree that such losses and any condemnation awards with respect to the Building on the Parcel D Property need not be paid to the Depository but shall be paid directly to Parcel D Owner (or to its Mortgagee if so required by its Mortgagee), but all requirements in this Declaration, relating to disbursement or otherwise, applicable to the Depository shall be applicable to such Owner or Mortgagee, as the case may be, and such Owner or Mortgagee shall hold all such amounts in a separate account to be used and disbursed only for the purposes and in accordance with the procedures set forth in this Declaration); (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material modification (if such coverage for material modification is commercially available) thereof to all insureds thereunder; (vi) shall include a standard mortgagee endorsement and loss payable clause in favor of the Mortgagees reasonably satisfactory to them; (vii) shall not include a co-insurance clause as respects Property or Boiler & Machinery insurance; and (viii) insurance maintained by an Owner alone and not as part of a joint policy may be carried on a "blanket" basis with other policies. Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by an Owner shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office, its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

15.4. Limits of Liability. Insurance specified in this Article 15 or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no

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review will be required more often than annually (unless there is a substantial change in the Building or operations conducted in the Building), 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 the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable Laws, 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. Initially, deductible amounts for insurance required under Sections 15.1(a) (other than loss of rental income insurance and terrorism insurance), 15.1(b) and 15.1(c) shall not exceed \$25,000 unless such other amount is agreed to and acceptable to Mortgagees. Deductible amounts for insurance required under Section 15.1(c) shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described above in this Section 15.4 and to requirements of Mortgagees. Where separate policies are issued under Section 15.1(a), then deductibles shall be the same, if reasonably possible. Limits of liability may not be less than limits required by Mortgagees, notwithstanding amounts set forth above in this Article 15 and nothing contained in this Article 15 or in this Declaration shall in any way alter, limit, or affect any insurance requirements set forth in any Mortgages or other loan documents executed and delivered by any Owner to a Mortgagee. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of all Owners of the applicable Building. With the consent of all Owners of the applicable Building, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared by the Owners in the ratio which their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other. Notwithstanding anything contained herein to the contrary, on each fifth (5<sup>th</sup>) anniversary date of the recording of this Declaration, unless the Owners agree otherwise, the liability insurance limits provided in this Article 15 shall be re-set to, at a minimum, the limits in question expressed in 2013 Equivalent Dollars.

15.5. Renewal Policies. Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by each Owner to the other Owners and to the Mortgagees prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this Article 15 or pay its share of the premiums or other costs for any joint policies, then the other Owners may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after the Creditor Owners' written demand therefor.

15.6. Waiver. Without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery, on its behalf

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and on behalf of its insurers, from the other Owners and their respective managers, representatives, tenants and contractors for any loss or damage insured (or required hereunder to be insured) under valid and collectible property and liability insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

15.7. Conflict. In the event of any conflict between the terms of this Declaration and the Declaration of Condominium Ownership governing any portion of the Property, the terms of this Declaration shall control, except in those instances in which statutory requirements of the Act are required to take precedence.

## ARTICLE 16

### MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

16.1. Maintenance of Buildings. Except: (i) as expressly provided in Section 13.1 hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Building, or hereinafter in this Article 16; (ii) in the event of fire or other casualty; (iii) with respect to the Easement Facilities and Owned Facilities of another Owner, and (iv) as provided in Article 12, each Owner shall, at its sole cost and expense, maintain and keep its respective Building, including all Facilities located in such Owner's Property 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 and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. No Owner shall suffer or commit, and shall take all reasonable precautions to prevent, waste to the such Owner's Property.

16.2. Damage Affecting Only a Portion of a Building. If any portion of the Building is damaged by fire or other casualty and if such damage occurs within one Owner's portion of a Building only and does not affect any other Owner's Building or Facilities, then any such damage shall be repaired and restored by the Owner of the portion of the Building in which any such damage occurs in such a manner as to restore such Owner's Building to the extent required to provide the Easements, Shared Facilities, functionality, services and appearance as such damaged portion of the Building had prior to such damage and in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article 24 hereof, be entitled to withdraw any insurance proceeds (including deductible amounts) held by the Depositary by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage; provided, however, that Owner D shall only be required to repair and restore any such damage to its Building to the extent required to provide the Easements and Shared Facilities and otherwise comply with any applicable requirements of the PD (and the functionality, services and appearance requirement set forth above shall only relate to the remainder of the Owner D Building if Owner D otherwise elects to restore its Building). If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration and the applicable damage to a Building adversely and materially affects an Easement in favor of the other Owner or services to be furnished the other Owner under Article 13 hereof, then: (i) the Creditor Owner may give

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written notice to the Defaulting Owner specifying the ways in which such repair or restoration is not proceeding diligently and, if, upon expiration often (10) Business Days after the receipt of such notice, any such work or repair or restoration is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation, the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 24 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 Defaulting Owner for all third party out-of-pocket costs and expenses reasonably incurred by the Creditor Owner in excess of said insurance proceeds. Repair and restoration under this Section 16.2 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owner's consent if such consent would not otherwise be required under Article 21.

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16.3. Joint Damage. If a Building is damaged by fire or other casualty and if the provisions of Section 16.2 hereof are not applicable to all such damage, then the repair and restoration of only that portion of such damage which does not fall within the categories set forth in Section 16.2, shall be the joint responsibility of the Owner or Owners in whose portion of the Building the damage occurs or whose Facilities are damaged (the "Affected Owners"). The Affected Owners shall commence and pursue to completion such repair and restoration to completion in as timely a manner as practicable. The Affected Owners shall jointly select a contractor to perform such repair and restoration from contractors who are licensed to do business in the State of Illinois and who have substantial experience in the construction and renovation of properties of similar age and type of construction, in the downtown Chicago area. Participation by an Affected Owner in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of such Affected Owner's respective Building or Facilities so damaged. In the event the Affected Owners fail to agree upon the selection of a contractor or contractors, the Affected Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Affected Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be an Arbitrable Dispute. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Affected Owners otherwise agree upon another person or entity to prepare them in accordance with instructions given by all Affected Owners. Such plans and specifications shall provide for the damaged portion of the Building to be rebuilt as nearly identical as commercially practicable to the damaged portion of Building as constructed prior to the damage, to the extent necessary to provide the same functionality and appearance to the portions of the Building with respect to Easements, Shared Facilities, functionality, services and appearance as such Building had prior to such damage, unless prohibited by law or unless the Affected Owners otherwise agree, subject to the consent of other Owners under Section 21.1(b) where required. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to each of the Affected Owners a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Affected Owners otherwise agree, any contractor or contractors shall work under the supervision of the Architect (or other architect or engineer preparing the plans and specifications), and the Architect (or other architect or engineer preparing the plans and specifications) is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Affected Owners, as such repair and restoration progresses, to disburse in accordance with Article 24 hereof, the insurance proceeds (including deductible) held by the Depository and any other monies deposited with the Depository pursuant to Section 16.4 hereof for application against the cost and expense of any such repair and restoration.

16.4. Cost of Repairs. If the cost and expense of performing any repair and restoration provided for in Section 16.3 hereof shall exceed the amount of available insurance proceeds, paid by reason of the damage, including deductible amounts, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the Owners: first, with respect to Easements or Shared Facilities in such proportion as may be required by the provisions of Article 13 providing for allocation of the Net Capitalized Cost of Replacement of such Easement or Shared Facilities, until such costs are recouped, and second, in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Building and Owned Facilities. Notwithstanding the foregoing, if an Owner has not carried the insurance required under Article 15 and, therefore, is a Defaulting

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Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

16.5. Deposit of Costs. In any instance of repair or restoration pursuant to Sections 16.3 or 16.4 hereof, an Affected Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum has theretofore been 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 Affected Owner may at any time give notice to the other Affected Owner demanding that each Affected Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 16.4. Any Affected Owner maintaining deductible amounts shall deposit the deductible amounts with the Depository. In lieu of depositing its share of such excess amount or deductible amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Affected Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Affected Owners. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit reasonably satisfactory to the other Affected Owner(s) and their Mortgagees (if any), in favor of the Depository in the face amount of the share owed or an irrevocable loan commitment, reasonably satisfactory to the other Affected Owner(s) and their Mortgagees (if any), issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess or deductible amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses, in proportion to such Affected 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 cost and expenses of the work. If an Affected Owner shall fail to pay, or, as the case may be, deposit, such Affected Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 16.5, or fails to deliver the security provided for above within twenty (20) Business Days after receipt of the other Affected Owner's written demand therefor, then the Creditor Owners may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

16.6. Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage to a Building, subject to Mortgagee's rights pursuant to Section 27.10, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Affected Owner in proportion to the ratio that the insurance proceeds contributed by such Affected Owner or by such Affected Owner's insurance company bears to the total insurance proceeds made available by the insurer for the repair and restoration or, if the insurance is provided by a single policy covering the Building, then the ratio of insurance proceeds attributed to such Affected Owner's portion of the affected Building and Owned Facilities by the insurer or the Affected Owner to the



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total insurance proceeds made available by the insurer or the Affected Owner for the repair and restoration. For purposes of this Section 16.6, insurance proceeds include deductible amounts.

16.7. Agreement Not to Repair. If a Building is destroyed or substantially damaged, and the Affected Owners do not unanimously agree not to rebuild (e.g., the destruction affects Owner B Building and the Owner C Building and Owner B desires to rebuild and Owner C desires to not rebuild), then the provisions of Section 16.3 shall apply and the Building shall be repaired and restored. If at the time of any casualty a portion (but not all) of a Parcel has been submitted to the Act, for purposes of this Section 16.7, the "Affected Owner" of such Parcel shall be deemed to have agreed to rebuild the Building located in such Parcel unless both the condominium association governing the portion of such Parcel submitted to the Act and the Owners of any portion of such Parcel not submitted to the Act unanimously agree not to rebuild the Building located in such Affected Parcel. If a Building is destroyed or substantially damaged, and the Affected Owners unanimously agree not to rebuild, repair or restore such Building, subject to the terms of any Mortgage affecting such Building, such Building shall be demolished to the extent necessary to comply with all applicable Laws. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Affected Owner in the same ratio of insurance proceeds contributed by such Affected Owner or by such Affected Owner's insurance company to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the affected Building, then in the ratio of insurance proceeds attributed by the insurer to such Affected Owner's portion of such Building and Owned Facilities to the total insurance proceeds paid by reason of such damage and, to the extent required by any Mortgage, applied to pay down the principal balance of such Mortgage. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 16.3, 16.4, 16.5 and 16.8 are applicable except that demolition, and not construction, shall be performed. After such demolition, the parties shall obtain an appraisal of the property of the affected Building by the Approved Appraiser and shall offer such property for sale at the appraised price, or such other price as the Affected Owners agree upon. After sale of such property upon terms agreed to by the Owners, the Owners shall divide the proceeds in accordance with a formula determined by such Approved Appraiser.

16.8. Costs Defined. For purposes of this Article 16, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

16.9. Common Walls, Floors and Ceilings. The obligations of the Owners under Section 16.1 shall be deemed to include an obligation to the center of Common Walls, Floors and Ceilings (including doors) regardless of the exact location of the boundary between the respective Parcels; provided, however, the Owners shall coordinate work with respect to Common Walls, Floors and Ceilings and doors and share equally their cost, except that improvements or repairs and maintenance benefiting only one Owner shall be performed by and shall be at such Owner's sole cost.

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## ARTICLE 17

### LIENS, DEBTS, INTEREST AND REMEDIES

17.1. Failure to Perform. If at any time, any Owner fails within twenty (20) Business Days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration or any other time period expressly provided for such payment to be made (thereby becoming a Defaulting Owner) then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have: (A) a lien against the portion of the Building and Parcel owned by the Defaulting Owner; and (B) in the event of a default under Article 15, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of a Building or Parcel or otherwise under insurance policies carried pursuant to Article 15 hereof, subject to Mortgagee's rights to such proceeds, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 17. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("Default Amount") shall have been paid in full. A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Building or Property owned by the Defaulting Owner, except a Prior Lien. A "Prior Lien" means the lien for ad valorem real estate taxes and a Mortgage which has been recorded against the Building or Property prior to the time of recording of the Creditor Owner's notice of lien.

#### 17.2. No Diminution of Lien.

(A) No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under Article 17) shall in any way affect or diminish any lien arising pursuant to this Article 17, and any lien which would have arisen against any property pursuant to this Article 17 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under Article 17) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

(B) If at any time any Owner as a Creditor Owner has recorded a notice of lien under Section 17.1 of this Declaration, which lien has not been foreclosed, released, or satisfied in full, and if such portion of the Property or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of such sale the lesser of: (i) an amount sufficient to satisfy that portion of the unpaid Default Amount; and (ii) the entire proceeds from the sale, minus any amount paid to satisfy a Prior Lien. Following any such sale, the Creditor Owner, shall continue to have a lien on the Defaulting Owner's portion of the Property to secure repayment of any unpaid portion of the Default Amount. The Creditor Owner holding this lien shall have the right to the proceeds of any subsequent sales of such Defaulting Owner's portion of the Property, as provided in this Article 17. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under Article 18, then the proceeds which a Creditor Owner is to receive to satisfy its lien shall be deposited with the Depository or

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other escrow acceptable to the Creditor Owner and held for disbursement at the joint order of the Owners or as directed by court order or by the arbitrator in such arbitration, as applicable.

17.3. Mortgagee's Subrogation. The Mortgagee on all or any portion of an Owner's Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article 17 affecting the property secured by its Mortgage, and to receive an assignment of such lien, upon payment of the amount secured by such lien.

17.4. Interest Rate. Interest shall accrue on all sums owed by a Defaulting Owner to a Creditor Owner (whether or not the specific provision of this Declaration requiring payment by a Defaulting Owner to a Creditor Owner expressly references such interest) and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by LaSalle Bank National Association at Chicago, Illinois or any successor thereto as its base or prime or reference rate of interest, or if a base or reference rate is not announced or available, then interest shall accrue at the annual fixed rate of eighteen percent (18%).

17.5. Cumulative Remedies. The rights and remedies of an Owner provided for in this Article 17 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or at law and equity; provided, however, that, notwithstanding any other provision herein to the contrary, no Owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from the other Owner as a result of any breach by the other Owner of its obligations under this Declaration.

17.6. No Set-Off. Each claim of any Owner arising under this Declaration 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.

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

17.8. Attorneys' Fees. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.

17.9. Self-Help. Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Declaration which grants an Owner the right to perform an obligation which the other Owner has failed to perform, a Creditor Owner shall have the right, in

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an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorney's fees, including appeals from judgments or orders) paid or incurred by the Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Declaration for nonperformance of an obligation, such provision shall control the provisions of this Section 7.9.

17.10. No Liens. An Owner performing any work required or provided for under this Declaration shall use reasonable efforts to include in any construction contract a provision pursuant to which the contractor: (i) recognizes the separate ownership, as applicable, of the Owners' respective Properties, and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. shall only be enforceable against the portion of the Property owned by the Altering Owner; or (ii) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 25 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

## ARTICLE 18

### DISPUTE RESOLUTION

18.1. Disputes Subject to Dispute Resolution Procedure. All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration (except that a claim for emergency injunctive relief shall not be subject to this Article 18):

(a) constituting a monetary claim involving an amount as to any one claim not exceeding \$1,000,000.00 (in 2013 Equivalent Dollars), exclusive of attorneys fees, interest and other similar additional amounts; or

(b) expressly made an Arbitrable Dispute or subject to arbitration under this Article 18 by the terms of this Declaration; or

(c) involving any of the following matters:

(i) selection of an insurance company or apportionment of insurance premiums under Section 15.2 hereof;

(ii) appointment of a contractor or contractors pursuant to Sections 16.3 or 20.4 hereof;

(iii) replacement of the Architect pursuant to Section 25.1 hereof;

(iv) failure to agree on a matter described in Sections 23.1 or 25.1 or which this Declaration expressly requires the Owners to jointly decide or agree upon; or

(v) disputes arising generally under Articles 13, 14, 16, 20 or 21.

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18.2. Notice. If any Owner believes that (a) any other Owner violated or breached this Declaration, or (b) any matter or dispute is otherwise an Arbitrable Dispute under this Declaration, then, in the case of clause (a), the non-defaulting Owner shall deliver Notice to the alleged defaulting Owner describing the matter, or, in the case of clause (b), an Owner shall deliver Notice to the other Owner requesting resolution of the Arbitrable Dispute, and in the case of clause (a), the Owner receiving the Notice shall have ten (10) days from the date Notice was delivered to cure the matter or to give Notice that no such breach occurred with a written explanation. In the event that the alleged default is not cured within said 10-day period in the case of clause (a), or in the event the dispute is not resolved within ten (10) days in the case of clause (b), the Owner shall proceed in accordance with the dispute resolution procedures of this Article 18.

18.3. Dispute Resolution. If the Owners are unable to resolve the matter within thirty (30) days after delivery of the initial written Notice provided for in Section 18.2, then the Owners shall resolve the Arbitrable Dispute by pursuing mediation in Chicago, Illinois and, if such mediation proves unsuccessful, binding arbitration, as provided for herein.

18.4. Mediation. The Owners shall initially endeavor to resolve any Arbitrable Dispute not resolved through negotiation by mediation which, unless the Owners agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect (except to the extent specific contrary provisions are contained herein). The Owner requesting mediation shall file a written request for mediation within forty five (45) after such Owner delivered the initial Notice provided for in Section 18.2, and provide Notice of same to the other Owner(s) and the American Arbitration Association in Chicago.

18.4.1 Unless the Owners agree otherwise, there shall be only one mediator who shall be a practicing attorney or a retired judge. The Owners shall attempt, within seven (7) days after such Notice, to agree on a mediator. If the Owners cannot agree on a mediator then a mediator who is a practicing attorney or a retired judge shall be promptly selected under and in accordance with the American Arbitration Association rules and procedures then in effect.

18.4.2 There shall be only one day of mediation unless the Owners mutually agree otherwise. The mediation shall take place within fourteen (14) days after the mediator is selected. The mediation shall take place at a mutually agreeable location. If the Owners are unable to agree on a location, the mediation shall take place at the offices of the American Arbitration Association located in Chicago.

18.4.3 No discovery of any kind will be allowed prior to such mediation, except that any potentially applicable insurance policies shall be produced and the parties may engage in other pre-mediation discovery by mutual agreement.

18.4.4 Each Owner shall pay their own attorneys' fees and costs incurred in the mediation. The Owners will split the mediator's fees and costs in equal shares.

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18.5. **Arbitration.** If the Arbitrable Dispute is not resolved within ten (10) days after the last day of mediation, then the Owners shall submit the Arbitrable Dispute to binding arbitration which, unless the Owners agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect (except to the extent specific contrary provisions are contained herein). The Owner seeking arbitration shall file its demand for arbitration within twenty (20) days after the last day of mediation and provide Notice of same to the other Owner(s) and the American Arbitration Association in Chicago.

18.5.1 Unless the Owners agree otherwise, there shall be only one arbitrator who shall be a practicing attorney or a retired judge. The Owners shall attempt, within ten (10) days after the demand for arbitration is filed and sent, to agree on an arbitrator. If the Owners cannot agree on an arbitrator then an arbitrator who is a practicing attorney or a retired judge shall be promptly selected under and in accordance with the American Arbitration Association rules and procedures then in effect.

18.5.2 All arbitration hearings shall take place within forty five (45) days after the arbitrator is selected, unless the Owners agree otherwise. The arbitration shall take place at a mutually agreeable location. If the Owners are unable to agree on a location, then the arbitration shall take place at the offices of the American Arbitration Association located in Chicago.

18.5.3 The arbitration of any matter involving \$200,000.00 (in 2013 Equivalent Dollars) or less shall be concluded in one day. All other Arbitrable Disputes shall be concluded after a maximum of three days of arbitration, unless the Owners mutually agree otherwise. The arbitrator shall determine how to effectively use the time for arbitration proceedings, and all decisions regarding time allocation shall be binding.

18.5.4 The Owners shall meet and confer with the Arbitrator in good faith to seek mutual agreement regarding any discovery procedures that may be appropriate in light of the scope and dollar amount at issue. If the Owners are unable to agree, the Arbitrator shall promptly decide what discovery is appropriate for the matter, and the Arbitrator's decision shall be binding, *provided that* unless the Owners otherwise agree (a) no discovery shall be permitted in connection with any Arbitrable Dispute involving less than \$75,000 (in 2013 Equivalent Dollars) in dispute, (b) no depositions shall be permitted in any Arbitrable Dispute involving less than \$200,000 (in 2013 Equivalent Dollars) in dispute, and (c) at most three (3) depositions, lasting no more than six (6) hours each, will be taken by each Owner.

18.5.5 In the case of disputes under Sections 18.1(c)(i), (ii) or (iii) above, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrator shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners. In the case of any other matter that the parties fail to agree upon that this Declaration expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrator shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of

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the issue and the provisions of this Declaration, if any, which require the arbitrator to make a particular finding.

18.5.6 Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Declaration expressly governing the subject of the dispute, except in those instances where the arbitrator is required to select an individual, company or entity from those selected by the Owners and none meets such standards, terms or conditions.

18.5.7 Any award of the arbitrator shall be final and binding upon the Owners and judgment thereon shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 17.4. The award shall require the Owner against whom the arbitrator rules to pay the prevailing party's attorneys' fees and costs incurred in connection with the arbitration, including the fees and costs of the arbitrator.

## ARTICLE 19

### UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as nonperformance of such obligation shall be directly caused an Unavoidable Delay, and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereinafter in this Article the "Non-Performing Owner") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

## ARTICLE 20

### CONDEMNATION

20.1. In General. 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 a Building or Parcel by any competent authority for any public or quasi-public use, the award, damages or just compensation (the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of such Building shall be performed, in accordance with the requirements of this Article 20. The Owners of such Building or Parcel shall cooperate with one another to maximize the amount of the Award.

20.2. Payment of Award to Depository; Temporary Taking Awards. All Awards resulting from the taking of all or any part of a Building or Parcel, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depository by the Owners, regardless of the Owner who received the Award, except as otherwise provided in Section 20.3, and the Depository shall disburse the Award as hereinafter provided.

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In the event of a taking of temporary use of any space not affecting Easements or services described in Section 13.1 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property.

**20.3. Taking of Only One Parcel.** In the event of a taking (other than a temporary taking) of a part of a single Owner's Property or Owned Facilities only, then, the Owner of the portion of the Building or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Building or Owned Facilities (not including any Easement Facilities or Owned Facilities of another Owner) to form an architectural and functional whole, to the extent that the failure to do so would adversely and materially affect an Easement in favor of any other Owner essential to the other Owner's operations or the services to be furnished the other Owner under Article 13. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Building or Owned Facilities in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 24 hereof and to retain any excess not required for such repair and restoration; provided, however, that the right of any particular Owner to receive a portion of such excess, if any, shall be subject to the provisions of Section 27.10. If the cost of repair or restoration is estimated to be less than \$100,000, then the Award need not be paid to the Depository. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration which adversely and materially affects an Easement essential to the other Owner's operations in favor of the other Owner or the services to be furnished the other Owners under Article 13 hereof, then (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the ways in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) Business Days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then a Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) a Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 24 hereof, be entitled to withdraw any Award and any other monies held by the Depository as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies. Repair and restoration under this Section 20.3 constitutes Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owner's consent if it would not otherwise be required under Article 21, and a Creditor Owner shall not be required to obtain the consent of a Defaulting Owner.

**20.4. Repair and Restoration by All Owners.** In the event of a taking other than: (A) a temporary taking described in Section 20.2 hereof; (B) a taking described in Section 20.3 hereof; or (C) a taking of all or substantially all of a Building or all of the Parcels underlying a Building, then, the Owners affected by such taking shall cooperate to repair and restore the remainder of the affected Building in accordance with plans and specifications (hereinafter described)



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approved by all affected Owners and their Mortgagees. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owners by a contractor or contractors jointly selected by the affected Owners. In the event the affected Owners fail to agree upon the selection of a contractor or contractors, the affected Owners shall request the advice of the Architect. If after receiving the Architect's advice, the affected Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in the portion of a Building owned by one Owner, then the approval of any other Owner shall not be required with respect to the plans and specifications therefor which do not constitute Alterations requiring consent of the other Owners under Article 21, nor shall the consent of any other Owner be required with respect to the selection of a contractor. In such event, however, such Owner shall consult with the other Owners of the affected Building. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the affected Owners shall otherwise agree. Such plans and specifications shall provide for repair and restoration of the remainder of a Building to form an architectural and functional whole, with such changes in such Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 2 through 4 hereof and for the furnishing of services under Article 13 hereof. The Architect will furnish to each of the Owners of the affected Building (but only if and to the extent such affected Owner's approval is required) a set of such plans and specifications for their approval. Unless the affected Owners otherwise agree, the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owner or Owners in whose portion of the Parcel such repair and restoration is being performed, as such repair and restoration progresses, to disburse, in accordance with Article 24 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

20.5. Excess Award. The Award for any taking described in Section 20.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 20.4). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's portion of the Property) bears to the apportionment of the Award to the other Owner(s) (including parties with an interest in the other Owners' portion of the Property affected by such taking); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 27.10. If there is no apportionment in any judicial or administrative proceeding, the Owners affected by such taking shall petition for such apportionment, if possible. Otherwise, the Owners affected by such taking shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach resolution shall constitute an Arbitrable Dispute.

20.6. Demolition. If, as a result of a taking described in Section 20.3 or Section 20.4 hereof, an Owner reasonably determines that its portion of the Roosevelt Collection Building can no longer can be repaired or restored or operated on an economically feasible basis, then the

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Owner shall notify the other Owners of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Roosevelt Collection Building as may be required by Sections 20.3 and 20.4 hereof. However, such Owner shall demolish, repair or restore its portion of the Roosevelt Collection Building to the extent, if any, as may be necessary to provide essential services set forth in this Declaration, Easements essential to the operations of the other Owners or structural support for the other portions of the Roosevelt Collection Building, and in the case of the Parking Garage, to the extent necessary to provide the other Owners with vehicular access to and use of the Parking Garage. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 20.4 hereof are applicable.

20.7. Allocation of Award. In the event of a taking of all or substantially all of a Building, the Award for such taking shall be allocated to the Owners of such affected Building in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to such Owners, in accordance with said apportionment (or pursuant to Section 20.5 if there is no apportionment); provided, however, that the right of an Owner to receive its share of any award and payment shall be subject to the provisions of Section 27.10.

## ARTICLE 21

### ALTERATIONS

#### 21.1. Permitted Alterations.

(a) An Owner (an "Altering Owner") may, at anytime, at such Altering Owner's sole cost and expense, make additions, improvements or alterations ("Alterations") to the part of a Building within such Altering Owner's portion of the Property, provided that such Alterations comply with all of the provisions of this Article 21 and any other applicable provisions of this Declaration. Alterations which include relocation of Facilities serving the non-Altering Owner, shall be permitted, subject to compliance with the conditions set forth in this Article 21. Replacement of such Facilities may be made by an Altering Owner without consent of other Owner, subject to the provisions of Section 13.8. The provisions of this Article 21 governing Alterations do not negate or diminish other provisions of this Declaration having to do with additions, improvements or Alterations expressly required or permitted in Articles 6 (Owner C Additional Floors Construction), 7 (School Construction), 12 (Structural Support), 13 (Maintenance and Services), 14 (Compliance With Laws), 16 (Maintenance and Repair) and 20 (Condemnation) hereof, which are governed by such provisions only and not this Article 21 unless also designated in such Articles as "Alterations" to be governed by this Article 21. The requirements of Section 7.1(b) shall be applicable (in addition to the requirements of this Article 21) to Alterations to the School Construction after its initial construction.

(b) Alterations to an Owner's portion of the Building shall not be made without the prior written consent of the other Owner(s) unless otherwise expressly permitted by this Declaration if such Alterations will:

(1) during their performance or upon their completion, unreasonably diminish the benefits afforded to such other Owner by an Easement or any Shared

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Facilities, or unreasonably interrupt such other Owner's use or enjoyment of any Easement or Shared Facilities;

(2) during their performance or upon their completion, materially degrade or materially diminish services to the other Owner under Article 13, it being agreed that a change in the type of athletic field on the Owner D Parcel shall not require consent:

(3) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to Article 13 hereof, unless the Altering Owner assumes the increase in costs allocated to such Alteration;

(4) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports in violation of Article 12; or

(5) consist of or result in discharge, release, emission, deposit, treatment, transport, production, incorporation, disposal, leakage, transfer or escape of Hazardous Material, in a manner which fails to comply with any applicable Law.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require the consent of any other Owner, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owner a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 21.1. If an Owner's consent is required and such other Owner consents to such Alterations or does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within fifteen (15) days (as hereinafter extended) after receipt of plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. Within the fifteen (15) day response period the other Owner may request: (i) additional information with respect to the proposed Alterations, in which case the other Owner will be granted an additional fifteen (15) days to respond from the date the other Owner receives such additional information; or (ii) an extension of the time to respond, (and any such request for an extension of time that is not in excess of ten (10) days from the date of the request shall not require approval). The Owner whose consent is requested will not unreasonably delay its response, having in mind the scope and complexity of the proposed Alterations. If, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of Section 21.1(a) or (b), then such Owner (the "Objecting Party") believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 21.1(a) or (b) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 21.1(a) or (b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to the rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 21.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

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(d) An Owner in making Alterations, shall: (i) perform all work in a good and workmanlike manner and in accordance with good construction practices; (ii) comply with all Laws, including, without limitation, the City building code; (iii) comply with all of the applicable provisions of this Declaration; and (iv) reimburse each other Owner for any and all out of pocket expenses incurred by such other Owner in connection with such Alterations. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of a Building in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would unreasonably disturb an occupant or occupants of the other portion of the Building, but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances. An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours and shall pay all costs associated with work at times other than normal business hours, including overtime and delay costs.

21.2. **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City or other government agency having jurisdiction thereof requires joinder of the other Owner. An Altering Owner shall send copies of any building permits to another Owner within the Building at such other Owner's request. If joinder by the other Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of the other Owner's execution of the application, permit or other instrument and shall reimburse each other Owner for all out of pocket expenses arising out of the other Owner's execution of the application, permit or other instrument.

## ARTICLE 22

### ESTOPPEL CERTIFICATES

Each Owner shall, from time to time, within ten (10) Business Days after written request from the other Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 27.10(B) hereof, execute, acknowledge and deliver to the requesting party, a certificate ("Estoppel Certificate") stating:

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

(B) Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Declaration (or grounds therefor after giving

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the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(C) Whether there are any sums (other than payments for Operating Expenses owed under Article 13 which in the aggregate are less than \$10,000.00 and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amounts thereof;

(D) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 13 hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected amount to be paid by the requesting Owner;

(E) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the notice, if any, required hereunder), or otherwise known by the Owner, against the enforcement of the requesting Owner's rights hereunder;

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

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

(H) The nature of any arbitration proceeding or finding under Article 18 made within the ninety (90) days preceding the date of such Estoppel Certificate;

(I) The current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 26 hereof, and

(J) Such other facts or conclusions as may be reasonably requested.

If the requesting party is a Mortgagee or prospective Mortgagee, the Owner on whose property it holds or intends to hold a Mortgage will be deemed the "requesting Owner." If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the "requesting Owner."

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## ARTICLE 23

### DEPOSITARY

23.1. Appointment of Depositary. A depositary (the "Depositary") shall be appointed, at or before such time as the duties of Depositary are to be performed, in the manner hereinafter provided to receive insurance proceeds and Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary shall be appointed by the Owners jointly, with the consent of each such Owner's Mortgagee (to the extent such consent is required pursuant to such Owner's Mortgage), and shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) or a nationally recognized title insurance company with offices in downtown Chicago, Illinois or other bank or trust company agreed to by the Owners. Any Owner may at any time propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) Business Days after receipt of the proposal by the other Owner, the disagreement shall become an Arbitrable Dispute. Each Owner shall be responsible for an equitable portion of the Depositary's reasonable fees and expenses for acting as Depositary, unless the Depositary is holding funds for the benefit of only one Owner in which case such Owner shall be solely responsible for the Depositary's reasonable fees and expenses for acting as Depositary with respect to such matter. In either event, the Depositary shall be entitled to retain said fees and expenses, free of trust, from monies held by it. Any Owner may propose to the other Owner how such fee shall be shared and if the Owners fail to agree on a cost sharing arrangement within ten (10) Business Days after receipt of an Owner's proposal, such disagreement shall become an Arbitrable Dispute. Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment in substantially the form attached hereto as Exhibit 23.1 and made part hereof.

23.2. Account Designation; Liability of Depositary. The Depositary shall deposit any insurance proceeds and/or Awards in a segregated account approved by the Owners and which, in any event, complies with the requirements (if any) of the affected Owners' Mortgages. The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except those arising from its own negligence or willful misconduct. The Depositary's reliance upon advice of independent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or Awards unless the Depositary shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to said insurance proceeds or Awards, then said Owner may authorize the Depositary to so proceed. In addition, the Depositary may rely conclusively on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 24.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

23.3. Interest on Deposited Funds. The Depositary shall have no obligation to pay interest on any monies held by it, unless the Depositary shall have given an express written undertaking to do so or unless all of the Owners for whose benefit monies are being held have requested, that the Depositary undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depositary and the

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applicable Owners, then the Depository, within thirty (30) days after request from any Owner given to the Depository and to the other applicable Owners and their respective Mortgagees, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within thirty (30) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impractical 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 funds and shall be held by the Depository in trust for the uses and purposes herein provided.

23.4. Indemnification of Depository. In consideration of the services rendered by Depository, the Owners jointly and severally hereby agree to indemnify and hold harmless the Depository from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depository's duties hereunder or in the defense of any claim or claims made against Depository by reason of its appointment hereunder, except where due to the negligence or willful misconduct of the Depository or actions not taken in good faith by the Depository. Where the Depository is only disbursing funds for one Owner, and the other Owner is not involved in the deposit or overseeing of disbursement of funds, such other Owner shall not be obligated to indemnify and hold harmless the Depository in connection with such duties of the Depository.

23.5. Resignation of Depository. Depository may resign by serving not less than sixty (60) days prior written notice on all of the Owners. Within thirty (30) days after receipt of such notice, the Owners jointly shall, in the manner set forth in Section 23.1 appoint a substitute who qualifies under Section 23.1 hereof (if there are duties to be performed at such time by a Depository or funds are held by the resigning Depository), and the Depository shall prepare a final accounting of all funds received, held and disbursed by it and transfer all funds, together with copies of all records, held by it as Depository to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, and there are funds held by the resigning Depository, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, which qualifies under Section 23.1 hereof.

## ARTICLE 24

### DISBURSEMENTS OF FUNDS BY DEPOSITARY

#### 24.1. Disbursement Requests.

(a) Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any Award or other funds for application to the cost of construction, repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably

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acceptable to the Owners of the affected Building, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the Work:

(1) That the sum requested either: (a) has been paid by or on behalf of an Owner (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 services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and the amount of any retentions, and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics' Lien Act and any title insurer affording coverage against mechanics' liens;

(2) That the sum requested, plus all sums previously disbursed, less retentions, 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;

(3) 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

(4) Other information which may from time to time be required by any Mortgagees which is customarily required by mortgagees of comparable buildings, or as may be agreed to by the Owners.

(b) Upon:

(1) compliance with the provisions of Section 24.1(a), and

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

(3) approval by the title insurer, the Owners of the affected Building and their Mortgagees (to the extent provided in their respective Mortgages) of the lien waivers and other documentation, and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and the Mortgagees) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the liens in favor of the Mortgagees,

the Depositary shall, out of the monies so held by the Depositary, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named



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in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owner or Mortgagee or the Depository may require that disbursements be made through the customary 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 Architect to the Depository in accordance with the provisions of this Section 24.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

24.2. No Lien or Consent by Contractor. No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the affected Owners of the Building to which such sums relate and any Mortgagee thereof, shall have any interest in or right to or lien upon any funds held by the Depository. The affected Owners of the Building to which such sums relate (with the consent of such Owners' Mortgagees) may jointly at any time provide in writing for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialmen, engineer, architect or any other person whatsoever. If at any time the affected Owners of the Building to which such sums relate (with the consent of such Owners' Mortgagees) shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions, and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

## ARTICLE 25

### ARCHITECT

25.1. Appointment of Architect. When and if required by the provisions of this Declaration, the applicable Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers to act jointly hereunder or a firm of architects which has retained a firm of engineers) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). The Architect shall be licensed to do business in the State of Illinois and shall have substantial experience in the design, construction and renovation of properties of similar age and type of construction, in the downtown Chicago area. In the event the Owners fail to agree upon the selection of the Architect, then the selection of the Architect shall be an Arbitrable Dispute. The Architect shall, upon its appointment, execute an agreement with the applicable Owners in the form required by such Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the applicable Owners may cause the then-serving Architect to be replaced without cause and without penalty or fee upon thirty (30) days' prior written notice. The applicable Owners acting jointly may replace the Architect for any reason. Any applicable Owner also may cause any Architect to be replaced, and the other applicable Owner(s) shall be deemed to have consented to such replacement, if it demonstrates to the other applicable Owner(s) that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently. If all applicable Owners do not jointly desire to replace the Architect, then the Owner desiring

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replacement of the Architect shall serve notice upon the other applicable Owners requesting the removal of the then-serving Architect, which notice shall set forth with specificity the ways in which such architect shall have failed to perform fairly, diligently or competently. If, in the opinion of the Owners receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 25.1, the Owners receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners of its objection in writing within ten (10) Business Days after receipt of such notice from the requesting Owner. If, within ten (10) Business Days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, or if the Owners fail to agree on the form of agreement, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the applicable Owners.

25.2. Notice of Submission of Dispute to Architect. In any instance when the Architect serving pursuant to Section 25.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence. No advice given by the Architect under this Declaration shall be binding on the Owners, and an Owner may accept or reject such advice.

25.3. Replacement of Architect. If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, then, if the Owners so choose, the Architect being replaced shall continue to act as Architect with respect, and only with respect, to such pending dispute or matter or the completion of such preparation of plans and specifications or supervision of any such Work.

25.4. Architect's Fees. The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner involved in the Work shall pay its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of a Building or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If not otherwise provided in this Declaration, the Owners shall agree on the equitable share owed by each Owner,

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and a failure to do so shall be an Arbitrable Dispute. If any Owner shall fail to pay its equitable share of any fees or expenses of the Architect within ten (10) Business Days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) Business Days after written demand for reimbursement, reimburse the other Owner for any such payment.

## ARTICLE 26

### NOTICES AND APPROVALS; CONDOMINIUM FORM OF OWNERSHIP

26.1. Notice to Parties. Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "notice" or "Notice") that an Owner is required, permitted or desires to give or make or communicate to the other Owners shall be in writing and shall be given or made to the address set forth below or at such other addresses as the parties may designate from time to time by notice given in accordance with the terms hereof. Notices shall be given by registered or certified United States mail, return receipt requested, or by recognized overnight delivery service and shall be deemed given two (2) Business Days after deposit with the United States mail, AND one (1) day after deposit with such overnight delivery service, as applicable.

If to Owner A:

McCaffery Interests, Inc.  
875 North Michigan Avenue  
Suite 1800  
Chicago, IL 60611

Attention: Chief Financial Officer

with a copy to:

Canyon Capital Realty Advisors  
Canyon-Johnson Urban Funds  
2000 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

Attention: Director of Asset Management

If to Owner B:

McCaffery Interests, Inc.  
875 North Michigan Avenue  
Suite 1800  
Chicago, IL 60611

Attention: Chief Financial Officer

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with a copy to:

Canyon Capital Realty Advisors  
Canyon-Johnson Urban Funds  
2000 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

Attention: Director of Asset Management

If to Owner C:

McCaffery Interests, Inc.  
875 North Michigan Avenue  
Suite 1800  
Chicago, IL 60611

Attention: Chief Financial Officer

with a copy to:

Canyon Capital Realty Advisors  
Canyon-Johnson Urban Funds  
2000 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

Attention: Director of Asset Management

If to Owner D:

McCaffery Interests, Inc.  
875 North Michigan Avenue  
Suite 1800  
Chicago, IL 60611

Attention: Chief Financial Officer

with a copy to:

Canyon Capital Realty Advisors  
Canyon-Johnson Urban Funds  
2000 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

Attention: Director of Asset Management

and to any Mortgagee which has complied with the notice provisions of Section 27.10 hereof.