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360 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS

143

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS

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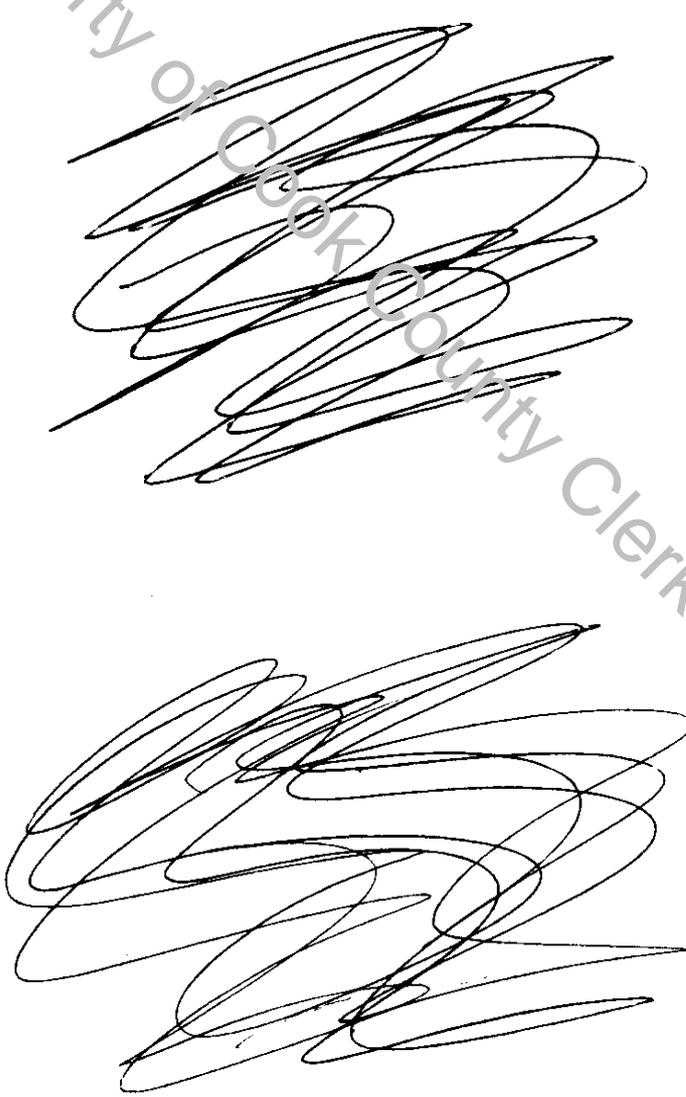
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### LIST OF EXHIBITS TO 360 NORTH MICHIGAN AVENUE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

<b>EXHIBIT LETTER OR NUMBER</b>	<b>TITLE OR DESCRIPTION</b>
1.1(A)	Legal Description of Hotel Parcel
1.1(B)	Legal Description of Retail Parcel
1.1(C)	Easement Exhibit
1.1(D)	Survey
5.1(A)	Domestic Water
5.1(B)	Plumbing Waste Vent and Storm Sewers
5.1(C)	Fire Protection (Sprinklers)
5.1(D)	Plumbing Grease Waste System
5.1(E)	Chilled Water
5.1(F)	Emergency System
5.1(G)	Electric Service
5.1(H)	Fire/Life Safety System
5.1(I)	In House Engineering and Maintenance
5.1(J)	HVAC and Natural Gas Systems
5.1(K)	Security Surveillance/Access System
5.1(L)	Service Elevator, Hoist, Loading Dock and Loading Dock Area
5.1(M)	Cabled Communications and Riser Management
5.1(N)	Street Level Maintenance and Snow Removal
5.1(O)	Roof Maintenance
5.1(Q)	Trash Collection
5.1(R)	Exterior Lighting
5.5	Billing and Payment
5.11	Licenses, Permits and Inspections
6.5(A)	Signage Exhibit
9.11	Required Work
16.1	Depository Agreement

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360 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS

## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS** (this "Declaration") is made and entered into as of the 29<sup>th</sup> day of May, 2015 by **AG-OCG 360 NORTH MICHIGAN, L.L.C.**, a Delaware limited liability company ("Hotel Owner"), and **AG-OCG 360 NORTH MICHIGAN RETAIL OWNER, L.L.C.**, a Delaware limited liability company ("Retail Owner").

### RECITALS

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, shall have the meanings set forth in ARTICLE 1 of this Declaration.

B. On or about July 25, 2013, Hotel Owner acquired the Property, which is commonly known as 360 North Michigan Avenue and 85 East Wacker Drive, Chicago, Illinois, and contains an existing 21-story office building at 360 North Michigan Avenue and a surface parking lot at 85 East Wacker Drive.

C. As of the date of this Declaration, Hotel Owner has caused the transfer to the Retail Owner, *inter alia*, of all of its interest to a portion of the first and second floors of the Building and a portion of the lower level of the Building located on Lower Wacker Drive.

D. The Hotel Owner intends to complete the renovation and redevelopment of the Hotel Property, which, when completed, will include the Tower Addition, approximately 450 hotel rooms and hotel amenities, certain new mechanical systems and utilities, fire alarm and suppression systems (including sprinklers), and life safety systems.

E. The Retail Owner intends to complete the renovation and redevelopment of the Retail Property, which, when completed will include retail space on the lower level, first and second floors of the Building.

F. Since neither the Retail Property nor the Hotel Property is currently functionally independent of the other and each depends upon the other, to some extent, for structural support, enclosure, ingress and egress, Utility services and other facilities and components necessary to the efficient operation and intended use of the Retail Property and the Hotel Property, the Owners desire, subject to the terms and conditions contained herein, to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by providing for, declaring and creating (i) certain easements, covenants, conditions and restrictions against and affecting the Retail Property which will be binding upon each present and future Owner of the Retail Property or of any portion thereof or interest or estate therein, and which

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will inure to the benefit of each of the present and future Owners of the Hotel Property, or of any portion thereof or interest or estate therein, and (ii) certain easements, covenants, conditions and restrictions against and affecting the Hotel Property, which will be binding upon each present and future Owner of the Hotel Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Retail Property or of any portion thereof or interest or estate therein.

**NOW, THEREFORE**, in consideration of the Recitals and the covenants contained herein, as of the Effective Date of this Declaration, the Owners, intending to be legally bound, 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 declare that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall, unless terminated in accordance with the terms and conditions expressly provided herein, exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall, unless terminated in accordance with the terms and conditions expressly provided herein, run with the land subjected to this Declaration.

## AGREEMENTS

### ARTICLE 1 DEFINITIONS

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

**2015 EQUIVALENT DOLLARS** – As defined in Section 11.2.

**ACT** - The Condominium Property Act of the State of Illinois in effect as of the Effective Date, as the same may be amended from time to time.

**ALTERATIONS** – As defined in Section 14.1(A).

**ALTERING OWNER** – As defined in Section 14.1(A).

**APPLICABLE PERCENTAGE** – As defined in Paragraph 6 of Exhibit 5.5.

**APPROVING PARTY** – The Owner designated from time to time to make certain decisions or give certain approvals pursuant to the terms of this Declaration. There shall be one Approving Party representing the Retail Property, which shall at all times be the Retail Owner, and one Approving Party representing the Hotel Property. Each Approving Party shall have absolute discretion to make the decisions or amend or terminate this Declaration pursuant to Section 20.4 or give the approvals expressly designated to be made or given on behalf of that portion of the Property represented by such position. The holder of the Approving Party position for the Hotel Owner shall have the right to assign, in writing, such position to any other Person owning all or any portion of the Hotel Property. At any time there is a permitted change in the identity of the Hotel Owner Approving Party, the Hotel Owner shall immediately notify the

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Retail Owner, in accordance with Section 19.2 hereof, of the name, address and comparable information as contained in Section 19.1 hereof relating to said new Hotel Owner Approving Party.

**ARBITRABLE DISPUTE** – Any dispute arising under this Declaration which is expressly made subject to arbitration under the provisions of ARTICLE 11 hereof or designated as an Arbitrable Dispute.

**ARCHITECT** – As defined in Section 18.1.

**ASSESSOR** – As defined in Section 7.1.

**AWARD** – As defined in Section 13.1.

**BUILDING** – A collective reference to the Retail Improvements and the Hotel Improvements.

**CITY** – The City of Chicago, Illinois, a municipal corporation.

**COMMON WALLS, FLOORS AND CEILINGS** – All common structural and partition walls, floors and ceilings situated on or adjoining two Parcels, or located on one Parcel but forming the walls, floors or ceilings of the adjoining Parcel.

**CONDOMINIUM ASSOCIATION** – if and when a Parcel or any portion thereof is submitted to the Act, and legally becomes condominium property pursuant to the Act, then, an Illinois not-for-profit corporation to be formed for the purpose of administering the respective portion(s) of the Parcel pursuant to the Act.

**CONDOMINIUM DECLARATION** – Any Declaration of Condominium Ownership and Easements, Restrictions, Covenants and By-Laws by which a Parcel or any portion thereof is submitted to the Act and legally becomes condominium property pursuant to the Act.

**CONDOMINIUM OWNER** – The Person or Persons (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of any portion of a Parcel submitted to the Act. If and so long as a Parcel or any portion thereof has been submitted to and remains subject to the provisions of the Act, the Condominium Owner shall mean collectively all of the Unit Owners in the portion of such Parcel as has been submitted to the Act, as represented by the Condominium Association for such portion.

**CONDOMINIUM PROPERTY** – A Parcel or any portion thereof that has been submitted to the Act, for so long as such Parcel or portion thereof remains subject to the Act.

**CONSUMER PRICE INDEX** – As defined in Section 11.2.

**CREDITOR OWNER** – An Owner (A) to whom payment of money or other duty or obligation is owed under this Declaration by the other Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Declaration or (B)

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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** – This Declaration, together with all Exhibits, amendments and supplements hereto.

**DEFAULT AMOUNT** – As defined in Section 10.1.

**DEFAULTING OWNER** – 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 the other 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.)

**DEPOSITARY** – The person or entity, from time to time acting pursuant to ARTICLE 16.

**EASEMENT EXHIBIT** – The plans and drawings comprising Exhibit 1.1(C) depicting certain, but not all, of the Easement Facilities.

**EASEMENT FACILITIES** – A collective reference to Retail Easement Facilities and Hotel Easement Facilities.

**EASEMENTS** – All easements declared, granted or created pursuant to the terms and provisions of this Declaration.

**EFFECTIVE DATE** – The date specified in the Preamble on Page 1 of this Declaration.

**EMERGENCY SITUATION** – A situation (A) impairing or imminently likely to impair structural support of the Retail Improvements or the Hotel Improvements; (B) causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Retail Improvements or the Hotel Improvements or any property in, on, under, within, upon or about the Retail Improvements or the Hotel Improvements; (C) causing or imminently likely to cause substantial economic loss to an Owner; or (D) substantially disrupting or imminently likely to substantially disrupt business operations in the Retail Portion or the Hotel Portion for its intended purpose. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

**ESTOPPEL CERTIFICATE** – As defined in Section 15.1.

**FACADE** – All exterior walls of the Building from the street level (including Lower Wacker Drive) up to the Roof, consisting, in part, of limestone, bricks or terra cotta and the parapet at the top of the Building covering or attached to the concrete or steel structural supports forming the curtain wall of the Building, window frames, window systems, joints and seals, but excluding (i) the glass in the windows, (ii) the Roof and the Roof structure, membrane, flashings and seals over the cornice; and (iii) any Loading Dock entrance and exit doors and entrance and exit door systems and joints and seals, whether currently existing or to be installed or constructed

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in the future. For purposes of this Declaration, the Facade on the Hotel Property shall be deemed to be any portion of the Facade which is attached to or on the Hotel Property, and the Facade of the Retail Property shall be deemed to be any portion of the Facade which is attached to or on the Retail Property.

**FACILITIES** – Any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers, 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, hangers, heat traces, indicators, inverters, junctions, lines, conduits, ducts, 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, switchboards, systems, tanks, telecommunication equipment, transformers, valves, compressors, wiring, and the like used in providing services from time to time in any part of the Building, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lighting protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, chilled water systems and equipment, ventilation and water service, fire/life safety and any replacements of or additions to any of the items described in this paragraph.

**HAZARDOUS MATERIALS** – 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 the 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, as amended (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.

**HISTORIC LOBBY AREA** – That certain area on the first floor of the Building that consists of the Lobby Easement Area, as identified on the Easement Exhibit, and the adjacent elevator lobby area within the Hotel Parcel, that includes a ceiling area that is designated as a Chicago Landmark by the City of Chicago.

**HOIST** – That certain electric chain host that serves the Lower Level and the Sub-Basement of the Building, as depicted on the Easement Exhibit.

**HOTEL EASEMENT FACILITIES** – Those Facilities now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Retail Portion (A) primarily benefiting the Hotel Portion, or (B) necessary for Hotel Owner to perform

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its obligations under this Declaration, but in either case excluding (1) those Facilities, the Maintenance for which Retail Owner is expressly responsible under this Declaration, and (2) Hotel Owned Facilities.

**HOTEL IMPROVEMENTS** – All improvements now or hereafter constructed within and upon the Hotel Portion by Hotel Owner, its successors, grantees or assigns.

**HOTEL OWNED FACILITIES** – Those, if any, Facilities owned by Hotel Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Retail Portion.

**HOTEL OWNER** – 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, aggregate, from time to time, fee simple ownership of the Hotel Property, are hereinafter collectively referred to as the “Hotel Owner.”

**HOTEL PARCEL** – The real property legally described on Exhibit 1.1(A), located in the City of Chicago, County of Cook and State of Illinois as the “Hotel Parcel”.

**HOTEL PORTION** – That portion of the Building located within the Hotel Parcel.

**HOTEL PROPERTY** – The Hotel Parcel improved with the Hotel Improvements.

**IMPACTED OWNER** – As defined in Section 6.2.

**INDEMNIFYING OWNER** – As defined in Section 6.1.

**INDEMNITEE** – As defined in Section 6.1.

**INSPECTING OWNER** – As defined in Section 6.6.

**INSURANCE COSTS** – As defined in Paragraph 6 of Exhibit 5.5.

**LAND** – The Retail Parcel and the Hotel Parcel, collectively.

**LAW OR LAWS** – 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.

**LEGAL PROCESS** – As defined in Section 19.2.

**LIENING OWNER** – As defined in Section 6.2.

**LOADING DOCK** - The portion of the Building so identified on the Easement Exhibit.

**LOADING DOCK AREA** - The portion of the Building so identified on the Easement Exhibit.

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**LOWER LEVEL** – The level of the Building being the area down from the ground level of the Building, as so identified on the Easement Exhibit.

**MAINTENANCE** – Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration, reconstruction and replacement when necessary or desirable of the Building or any Facilities, including the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. As used in ARTICLE 5, Maintenance excludes obligations for which the other Owner is responsible under ARTICLE 4, ARTICLE 9 or ARTICLE 13. Maintenance costs include utilities, labor and materials consumed in providing Maintenance.

**MECHANICS' LIEN ACT** – As defined in Section 14.3.

**MORTGAGE** – As defined in Section 20.11(A).

**MORTGAGEE** – As defined in Section 20.11(A).

**MULTIPLE OWNERS** – As defined in Section 19.2.

**NET CAPITALIZED COST OF REPLACEMENT** – As defined in Paragraph 6 of Exhibit 5.5.

**NET SALVAGE VALUE OF THE CAPITAL ITEM BEING REPLACED** – As defined in Paragraph 6 of Exhibit 5.5.

**NON-PERFORMING OWNER** – As defined in ARTICLE 12.

**NOTICE** – As defined in Section 19.1.

**OBJECTING PARTY** – As defined in Section 14.1(C).

**OCCUPANT** – Any Person from time to time entitled to the use and occupancy of any portion of the Retail Portion or the Hotel Portion as an Owner or under any lease, sublease, license, concession or other similar agreement.

**OPERATING EXPENSES** – As defined in Paragraph 6 of Exhibit 5.5.

**OWNED FACILITIES** – A collective reference to Retail Owned Facilities and the Hotel Owned Facilities.

**OWNER(S)** – Retail Owner and/or Hotel Owner.

**PARCEL(S)** – The Retail Parcel and/or the Hotel Parcel.

**PERMITTEES** – All Occupants and the officers, directors, members, 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 the Building.

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**PERSON** – Any individual, partnership, firm, associations, corporation, limited liability company, trust, land trust or any other form of business or not-for-profit organization or governmental entity.

**PRIOR LIEN** – As defined in Section 10.1.

**PROGRESS PAYMENT** – As defined in Paragraph 2 of Exhibit 5.5.

**PROHIBITED PERSON** – A person, group or entity that: (i) is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) is owned or controlled by or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (iv) is named as a “Specially Designated National and Blocked Person” or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (ii) is named in the lists maintained by the United States Department of Commerce (Denied) Persons and Entities, (iii) is any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC, and (iv) is named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government Person.

**PROJECTION NOTICE** – As defined in Paragraph 2(a) Exhibit 5.5.

**PROJECTIONS** – As defined in Paragraph 2(a) of Exhibit 5.5.

**PROPERTY** – A collective reference to the Retail Property and the Hotel Property.

**PUBLIC RETAIL PORTION** – That part of the Retail Portion that is generally open to the general public for use and not located solely within any Occupant’s premises within the Retail Portion, including any hallways, entryways, doorways, stairwells and vestibules used in common by any Occupants of the Retail Portion.

**RECORDER** – The Recorder of Deeds of Cook County, Illinois.

**REQUIRED WORK** – As defined in Section 9.11.

**RETAIL EASEMENT FACILITIES** – Those Facilities now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Hotel Portion (A) primarily benefiting the Retail Portion, or (B) necessary for Retail Owner to perform its obligations under this Declaration, but in either case excluding (1) those Facilities, the Maintenance for which Hotel Owner is expressly responsible under ARTICLE 5, and (2) Retail Owned Facilities.

**RETAIL IMPROVEMENTS** – All improvements now or hereafter constructed upon and within the Retail Portion by Retail Owner, its successors, grantees or assigns.

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**RETAIL OWNED FACILITIES** – Those Facilities, if any, owned by Retail Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Hotel Portion.

**RETAIL OWNER** – 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, aggregate, from time to time, fee simple ownership of the Retail Property, are hereinafter collectively referred to as the “Retail Owner.”

**RETAIL PARCEL** – The real property legally described on Exhibit 1.1(B) located in the City of Chicago, County of Cook and State of Illinois.

**RETAIL PORTION** – That portion of the Building located within the Retail Parcel.

**RETAIL PROPERTY** – The Retail Parcel, improved with the Retail Improvements.

**REVIEW** – As defined in Section 6.6.

**ROOF** – The roof level of the Building, including, without limitation, the membrane, roof covering and roof structure, gutters, downspouts and flashings.

**ROTUNDA AREA** – That certain area within the Retail Parcel on the first and second floors of the Building consisting of a historic interior rotunda entryway that is designated as a Chicago Landmark by the City of Chicago, as identified on the Easement Exhibit.

**SERVICE ELEVATOR** – The service elevator so identified on the Easement Exhibit.

**SHARED STAIRWELLS** - As defined in Section 3.2(K).

**SHARED SYSTEMS** – As defined in the Section 5.1 Exhibits.

**SPECIAL AMENDMENT** – As defined in Section 20.15.

**STATEMENT** – As defined in Paragraph 2(c) of Exhibit 5.5.

**STRUCTURAL SUPPORTS** – All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Building.

**SUB-BASEMENT** - The level of the Building being the area down from the Lower Level, as so identified on the Easement Exhibit.

**SURVEY** – That certain ALTA/ACSM Land Title Survey prepared by Chicago Guarantee Survey Company as Order No. 2014-20232-001, a copy of which is attached hereto as Exhibit 1.1(D).

**TOWER ADDITION** – The tower addition that will be constructed by Hotel Owner on the western side of the existing 360 North Michigan building on the portion of the Property

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located at 85 East Wacker Drive, which is currently anticipated to contain, *inter alia*, twenty-three stories, a hotel lobby entrance, a restaurant facility, and related Hotel Improvements.

**UNAVOIDABLE DELAY** – As defined in ARTICLE 12.

**UNIT** - Any part of the Hotel Parcel or the Retail Parcel described as a “Unit” in any Condominium Declaration.

**UNIT OWNER** - The person or persons, entity or entities whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.

**UNIT OWNERSHIP** - Any part of a Parcel which has been submitted to the Act consisting of one (1) Unit and the undivided interest in the common elements attributable thereto.

**UTILITY or UTILITIES** - Water, chilled water, electricity, sewer, gas, steam, telephone or network television, cable television, satellite equipment and microwave signals, internet service, or other services or materials generally known as utilities, now or in the future.

**UTILITY COMPANY** – 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, now or in the future.

**WORK** – As defined in Section 17.1(A).

1.2 **Construing Various Words and Phrases**. Wherever it is provided in this Declaration that a party “may” perform an act or do anything, it shall be construed that such party “may, but shall not be obligated to,” so perform or so do. 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;” and (iv) “will” and “shall” shall each be construed as mandatory. 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 or Appendices shall refer to the Exhibits and Appendices 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.

## ARTICLE 2

### **EASEMENTS APPURTENANT TO HOTEL PARCEL**

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

(A) Retail Owner has granted, reserved, declared and created the Easements described in Section 2.2 of this ARTICLE 2. The term “Granted” or “granted” as

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hereinafter used in this ARTICLE 2 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 2.2 of this ARTICLE 2 shall bind and be enforceable against Retail Owner and its successors, grantees and assigns.

(B) The Easements granted by Section 2.2 of this ARTICLE 2 benefit Hotel Owner and its successors, grantees, assigns and Permittees.

(C) For the purpose of Section 2.2 of this ARTICLE 2, the Retail Portion shall be deemed to be the servient tenement. Where only a portion of the Retail Portion is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement. Any conveyance of all or any portion of Retail Owner's estate or interest in the Retail Portion shall be made subject to the Easements and obligations in this Declaration.

(D) The Easements granted by Section 2.2 of this ARTICLE 2 are appurtenant to and shall benefit the Hotel Portion, which shall, for the purpose of this ARTICLE 2 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Hotel Portion is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Hotel Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement.

(E) In exercising an Easement granted under this ARTICLE 2, the Owner of the Parcel benefited by the Easement shall minimize the impact of its exercise on the Owner of the Parcel burdened by the Easement taking into consideration the impact of any disruption, and shall comply with the provisions of Section 14.1(D) whether or not the work being performed or exercise of the Easement constitutes Alterations. In addition to complying with the foregoing restrictions with regard to the easement rights granted under this ARTICLE 2, to the extent that access to any secured or unsecured rooms, vaults or other private or semi-private areas within the Retail Parcel (the "**Retail Restricted Access Areas**") is required in connection with the exercise of such easement rights, Hotel Owner shall provide reasonable advance notice to the Retail Owner (the "**Hotel Owner Notice of Access**") as to the nature and extent of the required access to such Retail Restricted Access Areas, and Hotel Owner shall not access any of the Retail Restricted Access Areas without: (i) first obtaining Retail Owner's prior consent, not to be unreasonably withheld, conditioned or delayed, (ii) at the election of Retail Owner, being accompanied by an authorized representative of Retail Owner, and (iii) otherwise complying with the terms of any tenant leases affected by the exercise of any access rights to any of the Retail Restricted Access Areas. Notwithstanding the foregoing, in the event the Retail Owner fails to respond to the Hotel Owner Notice of Access within three (3) business days, then upon Hotel Owner giving Retail Owner a second written notice and Retail Owner not responding within two (2) business days after such second notice, Retail Owner shall be deemed to have consented to such access by Hotel Owner, and Hotel Owner shall permit (but not be obligated to delay such access for) an authorized representative of Retail Owner to accompany Hotel Owner; provided, however, that such notice shall also be sufficient to satisfy the landlord's notice obligations to the tenant for

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such entry into any tenant space under the lease for any such space. For purposes of this Section 2.2(E), the second Hotel Owner Notice of Access shall include bold, conspicuous language at the top of such notice and in the body of such notice stating, "FAILURE TO RESPOND TO THIS NOTICE WITHIN TWO (2) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL BE DEEMED YOUR APPROVAL OF THE MATTERS RAISED IN THIS NOTICE". In the event of an Emergency Situation, Hotel Owner shall provide such prior written notice to Retail Owner as may be practicable considering the circumstances, and the foregoing notice provisions shall be deemed modified to reflect the same.

(F) Retail Owner may: (i) in connection with the Maintenance of the Retail Portion; or (ii) in an Emergency Situation; or (iii) to prevent a dedication of, or an accruing of rights by the public in and to the use of the Retail Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. To the extent practicable, Retail Owner shall provide alternative access during any temporary interruption or restriction of access pursuant to this subsection. Retail Owner may, from time to time, impose (y) reasonable limitations on Hotel Owner's or any of Hotel Owner's Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Retail Portion described in Section 2.2 of this ARTICLE 2 including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which Hotel Owner or any of Hotel Owner's Permittee's may use such Easement, and (z) reasonable security controls consistent with the use of the Retail Portion. In imposing limitations or controls, Retail Owner shall take into consideration the reasonable needs and requirements of the users of the Easement as well as the imposing Owner's own needs and requirements.

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

(H) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 5.6, and its rights under ARTICLE 9 or ARTICLE 13 or elsewhere in this Declaration, and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

2.2 **Grant of Easements.** The following Easements in, to, under, over, upon and through portions of the Retail Portion, in favor of the Hotel Portion, are hereby granted.

(A) **Ingress and Egress in Favor of Hotel Owner.**

(1) A non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the Public Retail Portion

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as is reasonably necessary for ingress and egress to the Hotel Portion and to permit the use and operation of the Hotel Portion

(2) A non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the Retail Portion as is reasonably necessary for the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (1) the Hotel Portion, (2) any Facilities located in the Retail Portion which provide or are necessary to provide the Hotel Portion with any utilities or other services necessary to the operation of the Hotel Portion, including, without limitation, Hotel Easement Facilities and Hotel Owned Facilities and (3) any other areas in the Retail Portion as to which an Easement for use or Maintenance has been granted to Hotel Owner, or the obligation to perform a service has been imposed by Section 5.1 or allowed by Section 5.6, including without limitation, vertical plumbing, mechanical, ventilation, electrical, and communication shafts; and electrical, mechanical, telecommunications, and any other equipment areas that serve the Hotel Portion.

(B) **Hotel Property Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the Retail Portion for the support of (1) the Hotel Portion, (2) any Facilities or areas located in the Retail Portion with respect to which Hotel Owner is granted an Easement and (3) Hotel Owned Facilities.

(C) **Use of Facilities Benefiting the Hotel Property.** A non-exclusive easement (1) for the intended use of all Facilities (other than Hotel Easement Facilities for which an easement for use is granted in (D), below) which are (i) located in the Retail Portion, including Hotel Owned Facilities; and (ii) connected to Facilities located in the Hotel Portion which provide or are necessary to provide the Hotel Portion with any utilities or other services necessary to the operation of the Hotel Portion and (2) permitting the exercise of the rights of self-help granted to Hotel Owner pursuant to Section 5.6 of this Declaration.

(D) **Hotel Easement Facilities.** A non-exclusive easement for Maintenance and use of the Hotel Easement Facilities.

(E) **Hotel Common Walls, Floors and Ceilings.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Retail Parcel and the Hotel Parcel which also serve as Common Walls, Floors and Ceilings for the Hotel Portion.

(F) **Hotel Utilities.** To Hotel Owner (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for Utility purposes required by the Hotel Portion, in those areas of the Retail Portion where such utilities are currently located, or where indicated on the Easement Exhibit, as the same may be modified or amended from time to time as set forth below. Hotel Owner shall attempt to install new Utility Facilities in the Hotel Portion (or in areas designated as Utility

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easement areas in the Easement Exhibit) if, at any time, it shall become necessary to relocate or add to existing Utility Facilities or install new Facilities. If installation of new Facilities within the Hotel Portion (or in areas designated as Utility easement areas in the Easement Exhibit) is not feasible or is cost prohibitive, Hotel Owner may request additional or relocated Utility easements in the Retail Portion from Retail Owner. Without limiting the provisions of ARTICLE 14 which may apply, Retail Owner shall have approval rights as to the location of the Utility Facilities, the method of installation, the identity of contractor(s), and the time of installation. Retail Owner's approval shall not be unreasonably withheld, conditioned or delayed, including, without limitation, in the event sewer lines, communication or electrical conduit must be installed in the Retail Portion below a floor slab that is located beneath the Hotel Portion, or in any area designated by Hotel Owner as an actual or potential Utility easement area. No such additional or relocated Utility easements may (1) unreasonably interfere with the reasonable use and enjoyment of the Retail Portion for the purposes for which the Retail Portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, or (2) require Retail Owner to grant an easement which would convert otherwise available space for occupancy or storage unless such relocation or additional easements are required by Law and no other space is reasonably available, and Retail Owner is equitably compensated for the value of such converted space. Hotel Owner shall repair and restore the Retail Portion to the condition existing prior to installation of any new Facilities and shall pay Retail Owner's reasonable costs and expenses in connection with granting such easement including, without limitation, all amounts Retail Owner must pay to tenants of the Retail Portion as a result of Hotel Owner's performing work in the Retail Portion hereunder. Retail Owner hereby also grants to Hotel Owner an easement permitting the existence, attachment and Maintenance of Hotel Owned Facilities in the Retail Portion and a non-exclusive easement for Maintenance and use of the Hotel Easement Facilities.

(G) **Hotel Portion Mechanical Rooms.** A non-exclusive easement for the use and Maintenance of any existing or future generator, mechanical, machine, electrical, stair, switchgear, panel meter, equipment or pump rooms which are now located in the Retail Portion and serve the Hotel Portion or as may hereafter be located in the Retail Portion in accordance with the provisions of this Declaration or other agreement of the Owners. This easement shall include, but not be limited to, any fire/life safety panel and equipment.

(H) **Hotel Portion Encroachments.** A non-exclusive easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in the same location or result from the construction of any Retail Improvements or any renovation of the Retail Portion or if, by reason of settlement or shifting of the Building, any part of the Hotel Portion or Hotel Owned Facilities not currently located within the Retail Parcel encroaches or shall hereafter encroach upon any part of the Retail Parcel. This Easement shall exist only so long as the encroaching portion of the Hotel Portion or such Facilities continues to exist, or replacements are made in the same location that do not deliberately, materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is materially enlarged.

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(I) **Hotel Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Hotel Owned Facilities or future Facilities in the Retail Portion, in locations now-existing as of the Effective Date or in locations resulting from the construction of any new Improvements or other locations in the Retail Portion mutually acceptable to Retail Owner and Hotel Owner.

(J) **Facade and Exterior Areas of the Retail Portion.** A non-exclusive easement permitting the erection, construction and use of all exterior portions of the Retail Portion, including the portion of the Façade located thereon, for Maintenance of the Building and Façade, including the right to erect and maintain scaffolding and construction canopies 24 hours per day, 365 days per year.

(K) **Easement Exhibit.** For convenience, certain, but not all, of the easements granted herein are shown and identified on the Easement Exhibit. The absence of a depiction of any such areas and Facilities on the Easement Exhibit does not mean that an easement with respect to such areas and Facilities does not exist. The Easement Exhibit is only intended to help locate or identify certain easements granted herein.

## ARTICLE 3

### EASEMENTS APPURTENANT TO RETAIL PARCEL

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

(A) Hotel Owner has granted, reserved, declared and created the Easements described in Section 3.2 of this ARTICLE 3. The term "Granted" or "granted" as hereinafter used in this ARTICLE 3 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 3.2 of this ARTICLE 3 shall bind and be enforceable against Hotel Owner and its successors, grantees and assigns. Certain of the Easements granted herein may be located, all or in part, within areas licensed from the City of Chicago and not owned by Hotel Owner. Hotel Owner's ability to grant Easements in such instances is limited to the extent of Hotel Owner's ownership interest.

(B) The Easements granted by Section 3.2 of this ARTICLE 3 benefit Retail Owner, and its successors, grantees, assigns and Permittees.

(C) For purposes of Section 3.2 of this ARTICLE 3, the Hotel Portion shall be deemed to be the servient tenement. Where only a portion of the Hotel Portion is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement. Any conveyance of all or any portion of Hotel Owner's estate or interest in the Hotel Portion shall be made subject to the easements and obligations in this Declaration.

(D) The Easements granted by Section 3.2 of this ARTICLE 3 are appurtenant to and shall benefit the Retail Portion, which shall, for the purpose of this ARTICLE 3 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Retail Portion is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Retail Portion, as it may exist from time

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to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement.

(E) In exercising an Easement granted under this ARTICLE 3, the Owner of the Parcel benefited by the Easement shall minimize the impact of its exercise on the Owner of the Parcel burdened by the Easement, taking into consideration the impact of any disruption, and shall comply with the provisions of Section 14.1(D) whether or not the work being performed or exercise of the Easement constitutes Alterations. In addition to complying with the foregoing restrictions with regard to the easement rights granted under this ARTICLE 3, to the extent that access to any secured or unsecured rooms, vaults or other private or semi-private areas within the Hotel Parcel (the "**Hotel Restricted Access Areas**") is required in connection with the exercise of such easement rights, Retail Owner shall provide reasonable advance notice to the Approving Party acting on behalf of Hotel Owner (the "**Retail Owner Notice of Access**") as to the nature and extent of the required access to such Hotel Restricted Access Areas, and Retail Owner shall not access any of the Hotel Restricted Access Areas without: (i) first obtaining Hotel Owner's prior consent, not to be unreasonably withheld, (ii) at the election of Hotel Owner, being accompanied by an authorized representative of Hotel Owner; and (iii) otherwise complying with the terms of any tenant leases affected by the exercise of any access right to any of the Hotel Restricted Access Area. Notwithstanding the foregoing, if the event the Approving Party acting on behalf of Hotel Owner fails to respond to the Retail Owner Notice of Access within three (3) business days, then upon Retail Owner giving Hotel Owner a second written notice and Hotel Owner not responding within two (2) business days after such second notice, Hotel Owner shall be deemed to have consented to such access by Retail Owner, and Retail Owner shall permit (but not be obligated to delay such access for) an authorized representative of Hotel Owner to accompany Retail Owner; provided, however, that such notice shall also be sufficient to satisfy the landlord's notice obligations to the tenant for such entry into any tenant space under the lease for any such space. For purposes of this Section 3.1(E), the second Retail Owner Notice of Access shall include bold, conspicuous language at the top of such notice and in the body of such notice stating, "**FAILURE TO RESPOND TO THIS NOTICE WITHIN TWO (2) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL BE DEEMED YOUR APPROVAL OF THE MATTERS RAISED IN THIS NOTICE**". In the event of an Emergency Situation, Retail Owner shall provide such prior written notice to Hotel Owner as may be practicable considering the circumstances, and the foregoing notice provisions shall be deemed modified to reflect the same.

(F) Hotel Owner may: (i) in connection with the Maintenance of the Hotel Portion; or (ii) in an Emergency Situation; or (iii) to prevent a dedication of, or an accruing of rights by the public in and to the use of the Hotel Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. To the extent practicable, Hotel Owner shall provide alternative access during any temporary interruption or restriction of access pursuant to this subsection. Hotel Owner may, from time to time, impose (y)

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reasonable limitations on Retail Owner's or any of Retail Owner's Permittees' use of an Easement providing for ingress and egress in, over, on, across and through the Hotel Portion described in Section 3.2 of this ARTICLE 3 including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which Retail Owner or any of Retail Owner's Permittees may use such Easement, and (z) reasonable security controls consistent with the use of the Hotel Portion. In imposing limitations or controls, Hotel Owner shall take into consideration the reasonable needs and requirements of the users of the Easement as well as the imposing Owner's own needs and requirements.

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

(H) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 5.6, and its rights under ARTICLE 9 or ARTICLE 13 or elsewhere in this Declaration, and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

3.2 **Grant of Easements.** The following Easements in, to, under, over, upon and through portions of the Hotel Portion, in favor of the Retail Portion, are hereby granted.

(A) **Ingress and Egress in Favor of Retail Owner.** A non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the Hotel Portion as is reasonably necessary to permit the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (1) the Retail Portion, (2) any Facilities located in the Hotel Portion which provide or are necessary to provide the Retail Portion with any utilities or other services necessary to the operation of the Retail Portion, including, without limitation, Retail Easement Facilities and Retail Owned Facilities, (3) the Loading Dock and the Loading Dock Area and any vestibule adjacent thereto, and (4) any other areas in the Hotel Portion as to which an Easement for use or Maintenance has been granted to Retail Owner, or the obligation to perform a service has been imposed by Section 5.4 or allowed by Section 5.6, including, without limitation, vertical plumbing, mechanical ventilation, electrical, and communication shafts; stairwells; electrical, mechanical, telecommunications, and any other equipment areas that serve the Retail Portion. The parties shall work in good faith to allocate usage of the Loading Dock between them and their tenants, licensees and invitees; provided that the Loading Dock shall be available for the shared use of the Retail Owner daily between the hours of 10:00 a.m. and 3:00 p.m. (local time), subject to shut-down for maintenance and repair. Use of the Loading Dock shall be subject to such reasonable rules as Hotel Owner may from time to time issue.

(B) **Retail Utilities.** To Retail Owner (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for Utility purposes required by the Retail Portion, in those areas of the Hotel Portion where such utilities are currently located. Retail Owner shall attempt to install new Utility Facilities in the Retail

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Portion if, at any time, it shall become necessary to relocate or add to existing Utility Facilities or install new Facilities. If installation of new Facilities within the Retail Portion is not feasible or is cost prohibitive, Retail Owner may request additional or relocated Utility easements in the Hotel Portion from Hotel Owner. Without limiting the provisions of ARTICLE 14 which may apply, Hotel Owner shall have approval rights as to the location of the Utility Facilities, the method of installation, the identity of contractor(s), and the time of installation. Hotel Owner's approval shall not be unreasonably withheld. No such additional or relocated Utility easements may (1) unreasonably interfere with the reasonable use and enjoyment of the Hotel Portion for the purposes for which the Hotel Portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, or (2) require Hotel Owner to grant an easement which would convert otherwise available space for occupancy or storage unless such relocation or additional easements are required by Law and no other space is reasonably available, and Hotel Owner is equitably compensated for the value of such converted space. Retail Owner shall repair and restore the Hotel Portion to the condition existing prior to installation of any new Facilities and shall pay Hotel Owner's reasonable costs and expenses in connection with granting such easement including, without limitation, all amounts Hotel Owner must pay to tenants of the Hotel Portion as a result of Retail Owner's performing work in the Hotel Portion hereunder. Hotel Owner hereby also grants to Retail Owner an easement permitting the existence, attachment and Maintenance of Retail Owned Facilities in the Hotel Portion and an exclusive easement for Maintenance and use of the Retail Easement Facilities.

(C) **Retail Property Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the Hotel Portion for support of (1) the Retail Portion, (2) any Facilities or areas located in the Hotel Portion with respect to which Retail Owner is granted an Easement and (3) Retail Owned Facilities.

(D) **Use of Facilities Benefiting Retail Property.** A non-exclusive easement (1) for the intended use of all Facilities (other than Retail Easement Facilities for which an easement for use is granted in (E) below) which are (i) located in the Hotel Portion, including Retail Owned Facilities; and (ii) connected to Facilities located in the Retail Portion which provide or are necessary to provide the Retail Portion with any utilities or other services necessary to the operation of the Retail Portion and (2) permitting the exercise of the rights of self-help granted to Retail Owner pursuant to Section 5.6 of this Declaration.

(E) **Retail Easement Facilities.** A non-exclusive easement for Maintenance and use of the Retail Easement Facilities.

(F) **Retail Common Walls, Floors and Ceilings.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Hotel Parcel and the Retail Parcel which also serve Common Walls, Floors and Ceilings for the Retail Portion.

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(G) **Retail Portion Encroachments.** A non-exclusive easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in the same location or result from any construction of the Hotel Improvements or any renovation of the Hotel Portion or if, by reason of settlement or shifting of the Building, any part of the Retail Portion or Retail Owned Facilities not currently located within the Hotel Parcel encroaches or shall hereafter encroach upon any part of the Hotel Parcel. This Easement shall exist only so long as the encroaching portion of the Retail Portion or such Facilities continues to exist, or replacements are made in the same location that do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is materially enlarged.

(H) **Retail Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Retail Owned Facilities or future Facilities in the Hotel Portion, in locations existing as of the Effective Date or in locations resulting from the construction of any new Improvements or other locations in the Hotel Portion mutually acceptable to Retail Owner and Hotel Owner.

(I) **Service Elevator; Hoist.** A non-exclusive easement for ingress, egress and use of the Service Elevator and Hoist, subject to the following provisions. Subject solely to the rights of any Occupant in the Retail Property on the Effective Date pursuant to a written lease that grants such Occupant the right to use the Service Elevator and/or the Hoist, the Retail Owner acknowledges and agrees that the use of the Service Elevator and Hoist by the Retail Owner and its Permittees shall be subject to reasonable rules and regulations promulgated from time to time by the Hotel Owner concerning the use of the Service Elevator or Hoist (including, without limitation, the establishment of reasonable hours for use of the Service Elevator or Hoist, proper security procedures for use of the Service Elevator or Hoist and the scheduling and coordination of the use of the Service Elevator or Hoist by the Retail Owner and its Permittees). Notwithstanding the foregoing, the Service Elevator and Hoist shall be available for the use of the Retail Owner and its Permittees daily between the hours of 10:00 a.m. and 3:00 p.m. (local time), subject to shut-down for maintenance and repair.

(J) **Retail Portion Mechanical Room.** A non-exclusive easement for the use and Maintenance of any existing or future generator, mechanical, machine, electrical, stair, switchgear, panel meter, equipment or pump rooms which are now located in the Hotel Portion and serve the Retail Portion or as may hereafter be located in the Hotel Portion in accordance with the provisions of this Declaration or other agreement of the Owners. This easement shall include, but not be limited to, any fire/life safety panel and equipment.

(K) **Shared Stairwells.** A non-exclusive easement for (i) access to over, on, across, and through, for ingress and egress, the stairwells and stairwell areas and stairwell doors extending through the Building identified on the Easement Exhibit as "Core Stair, Egress and Communicating Stair" and (ii) access to over, on, across and through, for egress only, the stairwells and stairwell areas and stairwell doors extending through the Building identified on the Easement Exhibit as "Podium Egress Stair" and "Basement

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Egress Stair" (the "Shared Stairwells"). Hotel Owner shall have the right to impose reasonable rules and regulations with respect to such access of the Shared Stairwells, and shall have the right to install such locks, key fob and key card scanners and such other devices at the doorways and access points in the Shared Stairwells in order to facilitate secure and authorized access to and from such stairwells, or to comply with applicable Laws.

(L) **Easement Exhibit.** For convenience, certain, but not all, of the areas and Facilities that are subject to easements granted herein are shown and numbered on the Easement Exhibit attached hereto. The absence of a depiction of any such areas and Facilities on the Easement Exhibit does not mean that an easement with respect to such areas and Facilities does not exist. The Easement Exhibit is only intended to help locate or identify certain easements granted herein.

## ARTICLE 4 STRUCTURAL SUPPORT

4.1 **Structural Safety and Integrity.** No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Building or of any portion of the Building owned by any other Owner.

4.2 **Construction of Support.**

(A) The Owner responsible for any adverse effect on the structural safety or integrity of any portion of the Building owned by any other Owner 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 Owner (whose approval will not be unreasonably withheld or delayed). 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 Section 9.3 and Section 9.4, and not this ARTICLE 4, shall apply if the adverse effect of the structural safety or integrity of the 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. If the 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 4, 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 the Building.

4.3 **Effect of Delay.** If delay in constructing necessary remedial structural support would endanger the structural safety or integrity of any portion of the Building in the reasonable opinion of the Architect, or responsibility for providing structural support cannot readily be

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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 the Building in which the reduction occurred or is occurring shall, upon not less than thirty (30) days' advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide 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 the other Owner's provision of any necessary remedial structural support.

## ARTICLE 5 SERVICES

5.1 Services. Each Owner shall furnish or cause to be furnished the following services to the other Owner when, as and if required or requested in accordance with the following:

- (A) Domestic Water. See Exhibit 5.1(A).
- (B) Plumbing Waste Vent and Storm Sewers. See Exhibit 5.1(B).
- (C) Fire Protection (Sprinklers). See Exhibit 5.1(C).
- (D) Plumbing Grease Waste System. See Exhibit 5.1(D).
- (E) Chilled Water. See Exhibit 5.1(F).
- (F) Emergency System. See Exhibit 5.1(F).
- (G) Electric Service. See Exhibit 5.1(G).
- (H) Fire/Life Safety System. See Exhibit 5.1(H).
- (I) In House Engineering and Maintenance. See Exhibit 5.1(I).
- (J) HVAC and Natural Gas Systems. See Exhibit 5.1(J).
- (K) Security Surveillance/Access System. See Exhibit 5.1(K).
- (L) Service Elevator, Hoist, Loading Dock and Loading Dock Area. See Exhibit 5.1(L).
- (M) Cabled Communications and Riser Management. See Exhibit 5.1(M).
- (N) Street Level Exterior Maintenance and Snow Removal. See Exhibit 5.1(N).
- (O) Roof. See Exhibit 5.1(O).

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(P) **Security.** Hotel Owner may provide, or contract for the provision of, security services for the Loading Dock Area, any basement and sub-basement levels, any common areas in the Building, and the Hotel Property (excluding, in all events, the Retail Property, for which Retail Owner shall be solely responsible). Retail Owner shall reimburse Hotel Owner for twenty-five percent (25%) of the cost of the security services as Operating Expenses, payable to Hotel Owner in accordance with Exhibit 5.5. Notwithstanding Hotel Owner's option to provide security services hereunder, Hotel Owner shall not be liable to Retail Owner or Retail Owner's tenants, occupants, licensees, and any Permittees, for failure to provide security or failure to provide adequate security unless the failure is the result of gross negligence or willful misconduct by Hotel Owner. Hotel Owner and Retail Owner may increase or decrease the scope of duties to be provided by the security guards as they shall agree from time to time.

(Q) **Trash Collection.** See Exhibit 5.1(Q).

(R) **Exterior Lighting.** See Exhibit 5.1(R).

Notwithstanding the above, Retail Owner may, at its sole cost and expense, supplement the services then being provided by the Hotel Owner; provided, however, that any such supplementing of services by Retail Owner shall be performed in a manner so as not to unreasonably interfere with the services being provided by the Hotel Owner and that the provision of any such supplemental services by Retail Owner which involve any Alterations shall be subject to the provisions of ARTICLE 17 hereof.

5.2 **Change In Services.** The Owners may agree from time to time to modify the procedures for providing services set forth in Section 5.1 above and all the exhibits related thereto or to discontinue the provision of a service. Any such agreement shall be effective upon the Owners executing and recording an amendment to this Declaration which sets forth the new agreement.

5.3 **Other Services.** Retail Owner may, in its sole discretion, furnish or cause to be furnished other services to Hotel Owner reasonably required or requested by Hotel Owner for normal business operations of the Hotel Portion on terms and conditions mutually acceptable to Hotel Owner and Retail Owner. Hotel Owner may, in its sole discretion, furnish or cause to be furnished other services to Retail Owner reasonably required or requested by Retail Owner for normal business operations of the Retail Portion on terms and conditions mutually acceptable to Hotel Owner and Retail Owner. Once determined, Hotel Owner and Retail Owner may amend this Declaration to incorporate the terms and conditions agreed to by the Owners regarding these services.

5.4 **Obligation to Furnish Services.** Each Owner obligated to perform services hereunder shall make a good-faith effort to operate its Facilities and furnish all services required under this ARTICLE 5 in a manner consistent with its intended respective use as mixed-use hotel and retail property, and the level of operation and management of comparable properties in downtown Chicago, Illinois, and in a manner consistent with the standards for Maintenance established in Section 9.1 and Section 9.2 hereof. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this ARTICLE 5, but shall not be

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liable under this ARTICLE 5 for interruption or inadequacy of service or loss or damage to property or business (including any consequential damages) arising out of such interruption or inadequacy, except as may be provided in Section 5.6 and Section 5.8. Each such Owner obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service (excluding snow removal) 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. Each Owner who is obligated to maintain, repair and replace any Facilities under Section 9.1 and Section 9.2 which are connected to other Facilities in the Building, the responsibility for whose Maintenance is the other Owner's under this ARTICLE 5, shall perform its obligations under Section 9.1 or Section 9.2 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under this ARTICLE 5. Where an exception exists to an Owner's obligation to perform Maintenance of Facilities described in an Exhibit to this ARTICLE 5, such exception has been set forth in such Exhibit. In no event shall Hotel Owner be obligated under this ARTICLE 5 for Maintenance of Retail Easement Facilities or Retail Owned Facilities nor shall Retail Owner be obligated under this ARTICLE 5 for Maintenance of Hotel Easement Facilities or Hotel Owned Facilities.

5.5 **Payment for Services.** Payment for services rendered pursuant to this ARTICLE 5 and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of Exhibit 5.5 attached hereto and made a part hereof.

5.6 **Owner's Failure to Perform Services.**

(A) If an Owner shall fail to perform as required by the terms and conditions of this ARTICLE 5 (except when such failure is caused by the other Owner or by Unavoidable Delay or except when the Owner obligated to perform the service is entitled to discontinue such service pursuant to Section 5.2, Section 5.4, or Section 5.8 hereof) and such failure shall continue for a period of (i) five (5) days for any critical service (as used herein, a "critical service" shall be a service that reasonably prevents, impedes, obstructs or otherwise interferes with the use and enjoyment of a Parcel or a portion thereof), and (ii) fifteen (15) days for any non-critical service 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 respective Occupants.

(B) During any period in which the Creditor Owner is performing pursuant to Section 5.6(A) hereof, the Defaulting Owner shall make payments to the Creditor Owner as provided in Exhibit 5.5.

(C) If a dispute exists as to whether the Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under ARTICLE 11 if not resolved within five (5) days after the dispute arises. Failure to

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submit the matter to arbitration shall not vitiate an Owner's rights under Section 5.6(A) and Section 5.6(B).

**5.7 Data Unavailable from Metering.** Where the allocation of the cost of a service under ARTICLE 5 is based on usage recorded by meters, 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 other Owner in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a Projection Notice or Statement (as such terms are defined in Exhibit 5.5) or statement of Net Capitalized Cost of Replacement under Exhibit 5.5 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 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 faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. 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 either 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.

**5.8 Discontinuance of Services.** If, at any time, a Defaulting Owner fails to perform its obligations under ARTICLE 4 or ARTICLE 5 after the expiration of any applicable notice and cure period or to pay a Creditor Owner any sum of money payable to the Creditor Owner within the time frame permitted for payment herein, then the Creditor Owner may send the Defaulting Owner a second notice ("**Second Notice**") which specifically references this Section 5.8 and states that Creditor Owner intends to discontinue providing services in the event that the default is not cured within fourteen (14) days after receipt of the Second Notice. If the default is still not cured by the expiration of the fourteen (14)-day grace period following delivery of the Second Notice then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner may discontinue furnishing services to be furnished by the Creditor Owner under ARTICLE 5 until the default is cured; provided, however, that if the Defaulting Owner in good faith disputes the default and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action or initiates an arbitration proceeding (where permitted or provided for under ARTICLE 11) to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner may not discontinue furnishing any such services unless and until it shall finally be determined by arbitration in accordance with ARTICLE 11 hereof or a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay or perform and, thereafter, the default still remains uncured in excess of five (5) days after the determination; and further provided, however, that the Creditor Owner may not discontinue any service if discontinuance would cause an Emergency Situation (other than one involving solely economic loss) or hinder steps to remedy an existing Emergency Situation (other than one involving solely

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economic loss). Notwithstanding that there may be a dispute as to the amount owed, an Owner shall nevertheless continue making payments as required under this ARTICLE 5 and Exhibit 5.5 until the dispute is resolved, at which time the Owners shall refund any overpayment or pay any deficiency, as applicable, including any interest thereon required under Exhibit 5.5.

5.9 **Replacement of Facilities.** An Owner may, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better, provided such replacement Facilities do not materially increase the obligations of an Owner in providing services under ARTICLE 5 and do not materially increase the cost to any Owner of any payments required to be made by such Owner (as a Retail Owner or an Hotel Owner). An Owner may correct the description of the room number or Facilities or references to Parcels described in the ARTICLE 5 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.

5.10 **Facade.** Hotel Owner shall be responsible for the Maintenance of that part of the Facade located within the Hotel Portion. Retail Owner shall be responsible for the Maintenance of that part of the Facade located within the Retail Portion. Retail Owner shall also be responsible for all storefront canopies, louvers, metal frames, and glass attached to that part of the Facade located within the Retail Portion, and Retail Owner shall promptly pay all license and permit fees payable pursuant to City of Chicago code for the use of, or relating to, such storefront canopies. ARTICLE 14 hereof shall govern proposed alterations to the Facade. From time to time, it may become necessary for Hotel Owner to erect scaffolding over the Retail Portion in conjunction with Facade work to be performed by Hotel Owner. In such instance, Hotel Owner shall (i) obtain, at its expense, all licenses and permits necessary for the scaffolding, (ii) diligently perform the Facade work in good faith so that the scaffolding is present for the shortest amount of time reasonably possible without incurring overtime charges, and (iii) ensure that reasonable pedestrian access to the Retail Parcel is provided while such scaffolding exists. Retail Owner shall have the right, subject to any Laws and any safety requirements of the contractor in control of such scaffolding, to install banner signs on such scaffolding. In no event shall the Hotel Owner be liable to Retail Owner for any actual, direct, indirect, special, or consequential damages incurred as a result of the scaffolding. Owners have not granted, and by the recording of this Declaration, do not intend to grant, a facade easement to the City of Chicago or to any other party. The boundaries are depicted for informational purposes only. In the event the City requires one report for the entirety of the Façade pursuant to the City's inspection and repair program with respect to the Façade or any other program required by the City or pursuant to any other Laws applicable to the Façade, then: (x) Hotel Owner, in consultation with, and with the reasonable cooperation of, Retail Owner, shall be responsible for the preparation and submittal of such inspection report or any related or similar documents to the City by Hotel Owner, and Hotel Owner shall have the right to engage an architect or other appropriate licensed professional to assist in preparation and submittal of such report or other document; and (y) Retail Owner shall reimburse Hotel Owner for nine and one-half percent (9.5%) of the reasonable cost incurred by Hotel Owner for the preparation and submittal of such inspection report or any related or similar documents and the fees and expenses of such architect or other appropriate licensed professional within fifteen (15) days after receipt of an invoice therefor from Hotel Owner.

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5.11 **City Licenses, Permits and Assessments.** Each of Retail Owner and Hotel Owner shall be responsible, at its sole expense, for obtaining and maintaining in full force and effect all licenses, permits and assessments necessary for the operation of its respective Parcel. Any license, permit or assessment which applies to the entire Building shall be obtained and maintained in full force and effect by Hotel Owner, and Retail Owner shall reimburse Hotel Owner for eight percent (8%) of the reasonable cost thereof within fifteen (15) days after receipt of an invoice therefor from Hotel Owner. This Section 5.11 is intended to apply to permits and inspections that are a part of normal building operations such as elevator certificates with respect to the Service Elevator, and include, without limitation, the items set forth on Exhibit 5.11 attached hereto, but does not include canopy permits or canopy inspections, the responsibility for which shall be borne solely by Retail Owner.

5.12 **Historic Lobby Area and Rotunda Area.** Retail Owner and Hotel Owner acknowledge that the Rotunda Area and the ceiling of the Historic Lobby Area are designated as Chicago Landmarks by the City Council of Chicago, and that, as a result, any modifications, repairs or other work in and to such areas will require certain additional approvals from the City of Chicago. Retail Owner and Hotel Owner further acknowledge that the ceiling area of the Historic Lobby Area and the Rotunda Area are a fundamental aspect of the historic nature of the Building, and that modifications, repairs and other work in and to the same will, by their nature, affect the other Owner's portion of the Building. Accordingly, with respect to any modifications, repairs or other work or Maintenance to be performed by either Owner on the ceiling of the Historic Lobby Area, or by Retail Owner in the Rotunda Area, Hotel Owner and Retail Owner agree that: (A) Hotel Owner and Retail Owner shall mutually and reasonably agree on the scope and extent of any work to be performed prior to the performance thereof; (B) Hotel Owner and Retail Owner shall mutually and reasonably agree on the architect, designer, and any contractor parties who shall perform such work prior to their engagement for such work; and (C) each Owner shall bear the costs of any work to be performed within its respective Parcel.

## ARTICLE 6

### **INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; USE; SIGNAGE; ENVIRONMENTAL AND ENGINEERING REVIEW**

6.1 **Indemnity by Owners.** Each Owner (hereinafter in this Section 6.1, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owner (hereinafter in this Section 6.1, the "Indemnitee") from and against any and all claims, including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any Person arising from the Indemnifying Owner's negligent use, possession or management of the Indemnifying Owner's portion of the Building, as applicable, or Owned Facilities or activities therein or arising out of the Indemnifying Owner's negligent use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom, but only to the extent the Indemnitee is not insured against (or required pursuant to this Declaration to be insured against) such losses, liabilities, damages, judgments, costs, or expenses under valid and collectible insurance policies. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding

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with attorneys reasonably satisfactory to Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. For purposes of this Section 6.1, the term "Owner" with respect to Hotel Owner shall include any hotel manager, asset manager, development manager, and hotel franchisor, brand or chain operating in or having an interest in the Hotel Property.

6.2 **Liens.** Each Owner (the "Liening Owner") shall remove any mechanics', materialmen's, manager's, broker's or any other similar lien filed by a third party that is not an Owner and arising by reason of the acts of the Liening Owner, its Permittees, and their respective agents and contractors or any work or materials or services for which the Liening Owner, its Permittees, and their respective agents or contractors has contracted (A) against the other Owner's portion of the Building, or Owned Facilities, or (B) against its own portion of the Building or Owned Facilities if the existence or foreclosure of such lien against its own portion of the Building or Owned Facilities would adversely affect the other Owner (such other Owner in (A) or (B) being the "Impacted Owner"), within the earliest to occur of (1) thirty (30) days after the filing thereof, (2) ten (10) days after the notice of commencement of any foreclosure proceedings as to such lien, (3) the time period set forth in any Mortgage applicable to a Parcel if such Parcel is affected by such lien or (4) immediately upon demand by an Impacted Owner if such Impacted Owner is then engaged in bona fide discussions for the sale, assignment or financing of its interest in all or any part of its Parcel. The Liening Owner shall not be required to remove such lien as set forth above under subsection (1) above if, within such 30-day time period, (X) such lien cannot be foreclosed, and (Y) the Liening Owner (i) 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 (ii) shall deliver to the Impacted Owner, at the Impacted Owner's option, either: (a) cash, a surety bond from a responsible surety company, or a title indemnity from a title company, reasonably acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (b) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. An endorsement 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 shall satisfy the requirements of clause (ii) above. In any case, the 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 6.2, thereby becoming a Defaulting Owner, then, 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 reasonable 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 6.2.

6.3 **Compliance With Laws.** Each Owner shall:

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(A) 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 the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for any portion of the Building itself, or would jeopardize the other Owner's right to occupy or utilize beneficially its respective portion of the Property 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 the other Owner;

(B) comply with all rules, regulations and requirements of any insurance rating bureau with an interest in the Property or any portion thereof, or the requirements of any insurance coverage on the other Owner's portion of the Property or Owned Facilities if noncompliance by it with respect to its respective portion of the Property or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by both Owners (unless the non-complying Owner pays all such increases), or (ii) render the other Owner's portion of the Property or Owned Facilities uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring the other Owner's portion of the Property or Owned Facilities; and

(C) deliver to the other Owner, within thirty (30) days after receipt, a copy of any written report, citation or notice having an effect on or relating to compliance of the Property with Laws.

(D) comply in all respects with any requirements of the Chicago Landmarks Ordinance and the rules and regulations of the Chicago Commission on Landmarks in connection therewith and not otherwise jeopardize in any way the status of the Building as an official Chicago Landmark structure.

## 6.4 Use.

(A) No use shall be permitted in the Property which does not comply with all applicable Laws, or would increase significantly the cost of insurance maintained by an Owner.

(B) The following uses (the "**Prohibited Uses**") shall not be permitted in the Retail Property without the consent of the Hotel Owner, which may be withheld in Hotel Owner's sole and exclusive discretion:

- (i) Any fire sale, bankruptcy, liquidation, or going out of business sale (unless pursuant to a court order with proper permits issued by the City of Chicago);
- (ii) Any mortuary or funeral home;
- (iii) Any hotel or hospitality related office use;

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(iv) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia (including any so called "headshop") or that exhibits live, or by other means to any degree, nude or partially clothed dancers or wait staff, and/or any massage parlors or similar establishments;

(v) Any bar, tavern, restaurant, or other establishment that is not a first-class restaurant, or whose reasonably projected annual gross revenues for the sale of alcoholic beverages for on-premises consumption (excluding wine sales) exceeds forty percent (40%) of the gross revenues of such business;

(vi) Any flea market, amusement or video arcade, pool or billiard hall or dance hall;

(vii) Any package liquor store or stand-alone liquor store;

(viii) Any clinic or office performing abortions;

(ix) Any off-track betting store or parlor;

(x) Any secondhand store or surplus store, flea market, pawn shop, swap meet, or similar operation primarily selling used goods, or currency exchange;

(xi) Any deep discount electronic merchandise or deep discount apparel store, such as TJ Maxx or Burlington Coat Factory; provided that the foregoing shall not prohibit discount apparel retailers that are affiliated with upscale or better department stores, such as Nordstrom's Rack, Neiman Marcus Last Call, Saks Fifth Avenue OFF 5<sup>th</sup>, or Barney's Warehouse;

(xii) Any 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;

(xiii) Any use that creates strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; or creates unusual fire, explosive or other hazards (provided that this provision shall not be deemed to prohibit restaurant usage, so long as such usage does not create unreasonably strong, unusual or offensive odors);

(xiv) Any storage warehouse operation (including but not limited to a self-storage facility) and any assembling, manufacturing, distilling, drilling, refining, smelting, agricultural, mining, or other industrial operation;

(xv) Any central laundry, dry-cleaning shop, dry cleaning plant or facility;

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(xvi) Any automobile, truck, trailer, or recreational vehicle service or body shop repair operation or sales or leasing operation (including any automobile service center or lubrication facility);

(xvii) Any residential use or lodging, including but not limited to single-family dwellings, townhouses, condominiums, other multifamily units, hotels, motels, and other forms of living quarters, sleeping apartments, or lodging rooms;

(xviii) Any veterinary hospital or animal raising or boarding facilities;

(xix) Any training or educational facility, including but not limited to beauty schools, barber colleges, library or reading rooms (except as incidental to the retail sale of books, magazines, and newspapers), places of instruction, or other operations catering primarily to students or trainees rather than to customers;

(xx) Any grocery or produce store;

(xxi) Any employment, staffing, or unemployment agency;

(xxii) Any automobile or vehicle sales, repair or rental agency;

(xxiii) Any hardware, paint or lumber sales or rental business; and

(xxiv) Any governmental agency, office, embassy or consulate.

(C) Retail Owner acknowledges that the Hotel is intended to be a first-class hotel, and accordingly, having "first-class" retail uses and Occupants in the Retail Portion are critical to the reputation, identity and use of the Hotel. Therefore, in addition to the Prohibited Uses, Retail Owner agrees that the Retail Property shall be used solely for first-class retail and restaurant uses consistent with first-class mixed use buildings located in the North Michigan Avenue corridor of Chicago, Illinois. Notwithstanding the foregoing provisions of this Section 6.4(C), all existing tenants as of the Effective Date in the Retail Portion are hereby deemed approved by the Hotel Owner hereunder.

Hotel Owner agrees that the Hotel Property shall be used for "first-class" uses consistent with first-class buildings in the downtown Chicago, Illinois area, including hotel, residential, office, and retail uses.

(D) Notwithstanding anything to the contrary contained in this Declaration, other than with respect to (i) the initial construction of the Retail Improvements, (ii) the period of restoration and repair with respect to any casualty or condemnation, (iii) the period during any tenant buildout of any portion of the Retail Property, (iv) the period of time during any approved Alterations to the Retail Property, (v) during any period of tenant vacancy (provided that Retail Owner shall use commercially reasonable efforts to re-let any vacant space at market rates), and (vi) as otherwise expressly consented to by Hotel Owner in writing, Retail Owner shall continuously occupy and conduct business in the Retail Property for the general public (or keep the Retail Property occupied and used

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by Occupants conducting business to the general public therefrom). During any such period described in this Section 6.4(D) where the Retail Property (or any portion thereof) is permitted to be closed for business, Retail Owner shall take such steps to ensure that the appearance of the Retail Property remains in keeping with the first-class nature of the Hotel Property; and in connection therewith, prior to any such closure, shall submit a written plan for the same to Hotel Owner for its approval at least 90 days prior to the date of such closure, which plan shall include appropriate window coverings, security, lighting and signage for the Retail Property during such period.

## o.5 Exterior Signage.

(A) Hotel Owner and Retail Owner acknowledge and agree that with respect to exterior signage, any exterior signage may be subject to the approval of the City of Chicago Landmarks Commission and the City Council of the City of Chicago. Attached hereto as Exhibit 6.5(A) (the "Signage Exhibit") is a proposed signage plan agreed upon by the Hotel Owner and Retail Owner on the Effective Date showing the anticipated signage locations for each of Hotel Owner and Retail Owner on the Building. Hotel Owner and Retail Owner shall cooperate, at their own respective expense, in obtaining such approvals of the Signage Exhibit as may be required by Laws. Upon final approval of the Signage Exhibit as set forth herein, Hotel Owner and Retail Owner shall execute an amendment to this Declaration to replace the Signage Exhibit attached hereto with the plan representing the final approved signage plan.

(B) Hotel Owner or its designer or assign shall have the right to install and maintain signage on the exterior of the Hotel Portion and on the Roof, or visible from the interior of the Hotel Portion. In addition, Hotel Owner shall have the right to install and maintain signage on the Retail Parcel in such locations as are depicted in the Signage Exhibit. Any and all such exterior and interior signage shall: (i) comply with applicable Law, (ii) be professionally designed and fabricated, and (iii) be installed and operated in a first-class manner. Building naming rights are addressed in Section 20.8 below.

(C) Retail Owner and the Occupants of the Retail Portion shall have the right, in accordance with Laws and this Declaration, to install and maintain signs on the Retail Portion for the Occupants of the Retail Portion, in the locations depicted on the Signage Exhibit. Retail Owner shall ensure that all such signage comports with uniform standards in order to enhance the visual impact to the public and for the mutual benefit of all Occupants. All signs must be professionally designed and fabricated. All permits and/or approvals by governing authorities for signs and their installation shall be obtained by the sign installer at Retail Owner's or the appropriate Occupant's expense. Each Occupant's primary sign shall be store identity (corporate or official trade name) signs only, and shall be restricted to an area as directed by Retail Owner in accordance with the Signage Exhibit. Primary fascia signs, if any, shall be completely installed and operating by the day an Occupant of the Retail Portion opens for business. All Retail Portion Occupant identification signs shall: (i) be subject to the prior written approval of Retail Owner, (ii) comply with applicable Law, (iii) be professionally designed and fabricated, and (iv) be installed and operated in a first-class manner consistent with first-class mixed use buildings located in the North Michigan Avenue corridor of Chicago, Illinois. No

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animated, moving action, flashing or audible signs will be permitted. No face illuminated, spot lighted, panel face exposed lamps, or visible neon tubing will be permitted. All signs shall bear the U.L. label and their installation shall comply with all governing building and electrical codes, and any criteria set forth in this Section 6.5(C). No exposed raceways, crossovers, or conduits will be permitted. Disconnects for Occupant signage will be located behind the sign fascia and above the access panel in soffit, so as not to be visible on sign fascia, if in accordance with code. No free-standing signs will be permitted. Electrical service to all signs shall be on that particular Occupant's meter. Sign, exterior entry lighting and awning illumination shall be connected to a seven day time-clock controlled by Retail Owner. At the rear service door of each Occupant of the Retail Portion's space, if any, that Occupant shall provide a sign, approved by Retail Owner in accordance with Law. In addition, no signs shall contain any strobe lights, moving parts or day-glow colors. The Retail Owner shall not place or permit the placement of any signs on the interior of any display window of the Retail Property except for those which are consistent with the operation of first-class businesses in the North Michigan Avenue corridor of Chicago, Illinois, including one sign per display window designating the availability of retail space for lease and contact (with phone number), provided that same shall not exceed eight (8) square feet in size.

Notwithstanding the foregoing provisions of this Section 6.5, all existing signage used in connection with the current operations of the Hotel Portion and the Retail Portion are hereby deemed approved by the Owners hereunder as to the above-described requirements.

**6.6 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 the other Owner's portion of the Property (other than any portion of the Property occupied by any Occupant), 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, shall repair any damage to property of the other Owner caused by a Review, and shall be subject to the indemnification obligations contained in Section 6.1 above. 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, lease, finance or refinance its property in which a requirement of said contract is a Review; or
- (B) if the Inspecting Owner's then current Mortgagee has requested a Review; or
- (C) if a Review is required by Law; or
- (D) if the Inspecting Owner, in good faith, believes that the other Owner may have breached the provisions of Section 6.3 or Section 6.4 as it relates to the matters

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which could be disclosed by a Review or that the Inspecting Owner may be adversely affected or subject to liability, as a result of matters which could be disclosed by a Review.

## **ARTICLE 7** **REAL ESTATE TAXES**

7.1 **Separate Real Estate Tax Bills.** In the event that, upon the recording of this Declaration, the Retail Property and the Hotel Property are not separately assessed and taxed by the Cook County, Illinois Assessor (the "Assessor"), then Hotel Owner shall file a tax petition with the Assessor to obtain separate real estate tax identification numbers and separate real estate tax bills for: (i) the Hotel Property as a group of one or more separate parcels of real estate, separate and apart from the Retail Property, and (ii) the Retail Property as a group of one or more separate parcels of real estate, separate and apart from the Hotel Property. Hotel Owner shall engage such counsel and other consultants as Hotel Owner may reasonably select. Retail Owner shall contribute to such fees and other costs of such counsel and other consultants based upon the percentage of real estate taxes for which Retail Owner is responsible pursuant to Section 7.2(A) and if the Assessor or an Owner requests information or advice from the other Owner to allocate the assessed valuation for land or improvements (other than information relating to income or expenses of an Owner's property) the Owners shall consult and reasonably cooperate with one another regarding such information and advice to be furnished to the Assessor.

### 7.2 **Payment of Real Estate Tax Bills**

(A) **Allocation of Real Estate Taxes.** Until separately assessed and taxed, the Retail Property shall be responsible for 50% of the real estate taxes and special assessments (the "Retail Tax Share") and the Hotel Property shall be responsible for 50% of the real estate taxes and special assessments (the "Hotel Tax Share"). Whenever the Retail Property and the Hotel Property are separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes and special assessments when due.

(B) **Payments of Taxes.** Hotel Owner, within thirty (30) days after Hotel Owner's receipt of a tax bill for which Retail Owner is responsible or shares responsibility pursuant to Section 7.2(A), shall deliver to Retail Owner a copy of said tax bill. Beginning on or about the Effective Date and during the period thereafter until the Hotel Property and the Retail Property are separately assessed and taxed by the Assessor, Hotel Owner shall make reasonable estimates, forecasts or projections (collectively, the "Tax Projection") of the amounts which Hotel Owner and Retail Owner shall each owe as and for their respective Tax Shares for any full or partial calendar year. Retail Owner shall deposit into an escrow account with First American Title Insurance Company or such other title insurance company located in Chicago, Illinois from time to time designated by Hotel Owner (the "Tax Escrow") an amount equal to one-twelfth (1/12<sup>th</sup>) of the Retail Tax Share based upon the then most recent Tax Projection on or before the first day of each calendar month, and shall promptly provide to Hotel Owner evidence of such deposit. Hotel Owner shall also be obligated to deposit into the Tax Escrow an amount equal to one-twelfth (1/12<sup>th</sup>) of the Hotel Tax Share, based upon the then most

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recent Tax Projection on or before the first day of each calendar month, and shall promptly provide Retail Owner evidence of such deposit. The failure of Hotel Owner to provide a Tax Projection for any particular calendar year shall not relieve Retail Owner or Hotel Owner from its obligation to continue to pay such monthly amounts as and for its Tax Share based upon the then most recent Tax Projection, until Hotel Owner delivers to Retail Owner an updated Tax Projection for the subject full or partial calendar year. On or about April 1 following the end of each calendar year, or at such time as Hotel Owner shall be able to determine the actual amount of real estate taxes for the calendar year last ended, Hotel Owner shall notify Retail Owner in writing of such actual amounts. If such actual amount exceeds the Tax Projection for such calendar year, then, each Owner, within ten (10) days after the date of such written notice to Retail Owner, shall deposit into the Tax Escrow an amount equal to the excess of its Tax Share payable for the calendar year last ended based upon the actual real estate taxes for such year over the total payments made by such Owner as and for its Tax Share during such calendar year. If the total payments by an Owner as and for its Tax Share during such calendar year exceeds the amount thereof payable for such year based upon the actual real estate taxes for such calendar year, then, such excess shall be credited to such Owner's installments of monthly payments payable by such Owner as and for its Tax Share payable after the date of Hotel Owner's notice until such excess has been exhausted, or Hotel Owner may elect to refund out of the Tax Escrow to itself and to Retail Owner the respective overpayments (or the balance thereof, as applicable) promptly after receipt of the final installment of the tax bill for the year in question. Until the Hotel Property and the Retail Property are separately assessed and taxed for real estate taxes, Hotel Owner shall deliver to Retail Owner promptly after its receipt thereof, and, prior to the imposition of any interest or penalties, copies of all tax bills for real estate taxes which are then due and payable, and Hotel Owner shall have the right to, and shall timely, either withdraw from the Tax Escrow such funds necessary to pay such tax bills to the appropriate taxing authority prior to delinquency, or to cause the escrowee of the Tax Escrow to pay such tax bills. So long as Retail Owner has paid the Retail Tax Share for real estate taxes in accordance with this Section 7.2(B), Hotel Owner shall deliver to Retail Owner reasonable evidence (e.g., tax receipts, cancelled checks) evidencing that the Hotel Tax Share and the Retail Tax Share have each been paid prior to the imposition of any interest or penalties. If any dispute arises out of this Section 7.2(B) and is not resolved within ten (10) days after written notice thereof from one Owner to the other, then such dispute shall constitute an Arbitrable Dispute which may be submitted to Arbitration pursuant to ARTICLE 11; provided, however, in no event shall Retail Owner's obligation to pay Retail Owner's Tax Share in accordance with this Section 7.2(B) be excused or postponed pending the resolution of such dispute.

**7.3 Failure to Pay Real Estate Taxes.** If any Owner (the "Defaulting Owner") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this ARTICLE 7, and the failure to pay same will result in the imposition of a lien on, or forfeiture or foreclosure of, any other Owner's portion of the Property, or subjects the other Owner to personal liability for this obligation, then, such other Owner (the "Creditor Owner") may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of

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such payment, including the amount of any interest or penalty thereon, with interest thereon as hereinafter provided, and the Creditor Owner shall also have a lien against the Defaulting Owner's portion of the Property in accordance with ARTICLE 10.

7.4 **Reference to Taxes in Leases or Contracts.** For purposes of this Declaration, and any documents or instruments, such as leases for space in the Retail Portion or the Hotel Portion referring to the allocation of real estate taxes pursuant to this Declaration, the real estate taxes allocated to a portion of the Property shall mean those taxes assessed and payable with respect to such portion of the Property, as provided in this ARTICLE 7.

7.5 **Tax Contests.** After the Retail Property and the Hotel Property are separately assessed and taxed, each Owner may contest any such taxes with respect to its portion of the Property with reasonable diligence and good faith, subject to Section 7.6 below.

7.6 **Tax Benefits.** As the Building has been designated as a Chicago Landmark, one or both of the Owners may have certain rights to obtain certain beneficial tax treatment from the Assessor or federal tax credits, such as Class L treatment by the Assessor or historic renovation tax credits. Each of the Owners shall cooperate and work in good faith to assist the other Owner in obtaining and maintaining Class L (or other similar tax benefits resulting from the local landmark status and historic status of the Building) treatment by the Assessor and obtaining and maintaining such historic tax credits and maintaining the Landmark designation for the Building, including, without limitation, executing such documents and completing such submissions as may be necessary or appropriate in order to achieve such tax treatment or tax credits. Notwithstanding anything to the contrary contained herein, all costs of any such applications, submissions, tax counsel or other costs associated with seeking such beneficial tax treatment and tax credits shall be borne solely by the Owner seeking such tax treatment for its portion of the Property. If either Owner is successful in achieving any such beneficial tax treatment or tax credits, such Owner shall provide written notice to the other Owner after achieving the same, and the other Owner shall not take any action which jeopardizes, interferes with, or causes a recapture or disallowance of such beneficial tax treatment or tax credits, without the prior written consent of the Owner benefiting from such beneficial tax treatment or tax credits. Each Owner shall indemnify and hold harmless the Owner benefiting from such beneficial tax treatment or tax credits 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 any breach of the obligations set forth in this Section 7.6.

## ARTICLE 8 INSURANCE

8.1 **Insurance Required.** Retail Owner and Hotel Owner shall procure and maintain the following insurance:

(A) **Real and Personal Property.** Hotel Owner shall keep the Hotel Property (including that portion of the Façade located within the Hotel Parcel), Hotel Owned Facilities, the Retail Property (including that portion of the Façade located within the Retail Parcel and all owned improvements and betterments within) and Retail Owned Facilities (exclusive of any personal property owned by tenants or others) insured on an

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“all risk” broad form coverage basis for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof, waiving all co-insurance provisions, less a reasonable deductible, including terrorism coverage, and boiler and machinery insurance on a comprehensive, blanket and repair and replacement basis, all in such amounts and with such deductibles as may be carried by prudent owners of similar buildings in downtown Chicago, Illinois, and shall pay all premiums for such coverage. Such policies shall be endorsed with a replacement coverage endorsement (waiving any applicable co-insurance clause). 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 name Hotel Owner and Retail Owner as named insureds and loss payees as their interests may appear. The Insurance Costs for the insurance to be procured and kept by Hotel Owner pursuant to this Section 8.1(A) shall be apportioned between the Hotel Property and the Retail Property based on the manner in which the insurance carrier providing such coverage has underwritten the risks. Retail Owner shall pay the portion of the Insurance Costs so apportioned to the Retail Property by such insurance company as Operating Expenses. Hotel Owner shall pay the portion of the Insurance Costs so apportioned to the Hotel Property by such insurance company. If Hotel Owner is unable to determine the manner in which such insurance carrier has underwritten the risks, then, the Insurance Costs shall be apportioned by Hotel Owner between the Hotel Property and the Retail Property based upon the reasonable advice of an insurance advisor engaged by Hotel Owner. If the Insurance Costs are not apportioned based on the manner in which such insurance carrier has underwritten the risk, and Retail Owner objects in good faith to the manner in which Hotel Owner has apportioned such Insurance Costs, then, Retail Owner shall give Hotel Owner written notice of such objection no later than fourteen (14) days from the date Retail Owner receives notice of such apportionment from Hotel Owner (time being of the essence), and Hotel Owner and Retail Owner shall use commercially reasonable efforts to resolve such question. If the parties are unable to resolve such question within thirty (30) days from the date Hotel Owner received Retail Owner’s written notice of objection, then, the question of apportionment of such Insurance Costs shall constitute an Arbitrable Dispute. Notwithstanding Retail Owner’s objection to the apportionment of such Insurance Costs by Hotel Owner, Retail Owner shall pay Hotel Owner the full amount of Retail Owner’s share of Insurance Costs as part of Operating Expenses pursuant to Exhibit 5.5 as determined by Hotel Owner, subject to readjustment at such time as any disagreement relating to the apportionment of the Insurance Costs may be resolved in favor of Retail Owner (i.e., through mutual agreement of Owners or based on a decision of such Arbitrable Dispute). In addition, Hotel Owner shall obtain and maintain in full force and effect the foregoing types of insurance for all Shared Systems, and Retail Owner shall reimburse Hotel Owner for Retail Owner’s Percentage (as set forth in the various 5.1 Exhibits) of such shared costs in accordance with the billing procedures set forth in Exhibit 5.5. Retail Owner shall pay the portion of the premiums and other costs for such insurance allocated to the Retail Portion. Hotel Owner shall pay for the portion of the premiums and other costs for such insurance allocated to the Hotel Portion.

(B) **Public Liability.** Each Owner shall (1) insure against public liability claims and losses on a commercial general liability form, including terrorism coverage, with broad form coverage endorsements covering claims for personal and bodily injury,

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or property damage occurring as a result of operations on the Property (including contractual liability covering obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage for limits, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage and with an amount of not less than \$9,000,000 (in 2015 Equivalent Dollars) of umbrella coverage, including terrorism coverage.

(C) **Builder's Risk.** Each Owner shall carry or shall cause its contractors to carry "all risk" builder's risk insurance for not less than the completed value of the work then being performed by such Owner or Owners under ARTICLE 4, Section 9.3 or Section 9.4 or for any Alterations which require the other Owner's consent under Section 14.1. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of 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 downtown Chicago. Coverage under this Section 8.1(C) shall only be required to the extent such coverage is not already provided within the property coverage under Section 8.1(A).

(D) **Worker's Compensation.** Each Owner shall, or cause its contractors performing work at the Property to, carry worker's compensation insurance in amounts as required by Law and employer's liability, insurance in not less than the following amounts: bodily injury by accident, \$1,000,000 (in 2015 Equivalent Dollars) each accident; bodily injury by disease, \$1,000,000 (in 2015 Equivalent Dollars) each employee.

(E) **Property Insurance.** Each Owner shall each obtain and maintain property insurance against loss or damage by fire, lightning, water, terrorism, wind and such other perils as are included in a standard "special causes of loss form" property insurance policy in an amount no less than one hundred percent (100%) of the replacement cost, waiving all co-insurance provisions (including the cost of demolition, increased costs to repair or rebuild the property to comply with current building, zoning or land use ordinance or law, and debris removal) for all personal property, including such Owner's improvements.

(F) **Business Income.** Upon the completion of construction work, each Owner shall procure and maintain business income or rental income insurance covering no less than eighteen (18) months of gross revenue with not less than an additional three hundred sixty-five (365) day period of extended indemnity coverage. Notwithstanding the foregoing, at all times during which structural construction, repairs or alterations are being made, any Mortgagee shall accept delayed completion coverage in lieu of business income or rental income insurance.

8.2 **Insurance Companies.** The Owners may, but shall not be obligated to, carry any insurance required hereunder jointly; provided, however, that if any Mortgagee requires that an Owner comply with insurance requirements in excess of the insurance coverages carried jointly, then such Owner shall be solely responsible for the additional costs of such required excess

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coverage. Insurance policies required by Section 8.1 hereof shall be purchased from reputable and financially responsible insurance companies, who hold a current Rating of not less than A/X (or such lesser rating as the Owners may agree) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

8.3 **Insurance Provisions.** Each policy described in Section 8.1 (other than Section 8.1(D)) hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall insure as insureds Retail Owner and/or Hotel Owner and their respective Mortgagees, using a long form loss payable (except that the Owners other than the primary insured shall be "additional insureds" under liability insurance policies); (iii) shall provide (except for liability insurance described in Sections 8.1(B) and (D), 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 to the property insured under the policy; (iv) shall provide, except for the insurance required by Section 8.1(B), (D) and (F), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of ARTICLE 16 hereof, unless the Owners otherwise agree; (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material modification thereof to Mortgagees, the Owners and all other insureds thereunder; (vi) shall not include a co-insurance clause; (vii) shall provide coverage on an occurrence basis, rather than a claims made basis; and (viii) insurance maintained by Retail Owner or Hotel Owner alone and not as part of a joint policy may be carried on a "blanket" basis with other policies so long as the blanket policies specify the amount of coverage allocated to the Retail Portion and the Hotel Portion, as the case may be. If separate insurance companies provide the coverages required pursuant to Sections 8.1(A), 8.1(B) and 8.1(C), then all such companies shall 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. Nothing contained herein shall prohibit an Owner from passing through amounts paid by that Owner for insurance as operating costs under tenant leases so long as each Owner remains primarily liable for its obligations under this ARTICLE 8.

If, by reason of any failure by an Owner to comply with any provisions of this Declaration or a change in the use of an Owner's Property resulting in an increased insurance risk, any Insurance Costs for which the other Owner is fully or partially responsible under this Declaration increases above the amount which would have been applicable if such failure or change of use (as applicable) had not occurred, then the Owner responsible for such increase shall reimburse the other Owner, on demand, for the increase of Insurance Costs attributable to such failure or change of use (as applicable) on the part of such Owner.

8.4 **Limits of Liability.** Insurance specified in this ARTICLE 8 or carried by the Owners shall be jointly reviewed, but no 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 covered and the financial responsibility of the insurers. Based upon said review, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming any increase, decrease or modification, which any Owner may record with the

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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 the Owners. The Owners may agree to 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 their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

8.5 **Renewal Policies.** Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by an Owner to the other Owner at least thirty (30) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified 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 8 or pay its share of the premiums or other costs for any joint policies, then, the other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after the Creditor Owner's written demand therefore.

8.6 **Waiver.** Without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery from the other Owner for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

8.7 **Owner's Insurance Required by Mortgagee.** If an Owner's Mortgagee requires that Owner to comply with any insurance requirements ever and above the requirements set forth in this ARTICLE 8, then that Owner will be required to comply with not only the requirements set forth above, but also that Owner's Mortgagee's requirements. In addition, if an Owner's Mortgagee's insurance requirements are less than the requirements set forth in this ARTICLE 8, such lesser requirements shall not limit such Owner's obligation to comply with the insurance requirements set forth herein.

8.8 **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, if an Owner fails to procure and maintain any of the insurance required hereunder, the other Owner shall have the right, upon reasonable advance notice, if possible under the circumstances and which may be oral notice if written notice is impossible or impracticable, to procure the insurance that such Owner has failed to procure and maintain on behalf of such Owner. The procuring Owner shall be entitled to payment from the other Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the Owner in performing such obligations, plus interest thereon at the rate set forth in Section 10.4.

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## ARTICLE 9

### MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

9.1 **Maintenance of Retail Portion.** Except: (a) as expressly provided in ARTICLE 5 hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Retail Portion or hereinafter in this ARTICLE 9; (b) in the event of fire or other casualty; and (c) as provided in and without limiting or diminishing such Owner's obligations under ARTICLE 4; Retail Owner shall, at its sole cost and expense, maintain and keep the Retail Portion, including all Facilities located in the Retail Portion (other than the Hotel Easement Facilities and Hotel Owned Facilities), and the Retail Easement Facilities and Retail Owned Facilities in good order and condition, comparable to other similar buildings in downtown Chicago, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in the condition required hereunder, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Retail Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its portion of the Property. With respect to the Maintenance of the Retail Portion or Facilities located in the Hotel Portion, Maintenance expressly includes the right of entry with reasonable prior notice (except in an Emergency Situation) by the party seeking to perform Maintenance, and its contractors, agents and employees into any areas thereof and the right to perform Maintenance as and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however that the responsibility to repair any damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to the building standard condition existing immediately prior to such damage.

9.2 **Maintenance of Hotel Portion.** Except: (a) as expressly provided in ARTICLE 5 hereof (and related Exhibits) relating to Maintenance of certain Facilities and other areas of the Hotel Portion, or hereinafter in this ARTICLE 9; (b) in the event of fire or other casualty; and (c) as provided in and without limiting or diminishing such Owner's obligations under ARTICLE 4, Hotel Owner shall, at its sole cost and expense, maintain and keep the Hotel Portion, including all Facilities located in the Hotel Portion (other than the Retail Easement Facilities and Retail Owned Facilities), and the Hotel Easement Facilities and Hotel Owned Facilities in good order and condition, comparable to other similar buildings in downtown Chicago, 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 the condition required hereunder, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Hotel Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its portion of the Property. With respect to the Maintenance of the Hotel Portion or Facilities located in the Retail Portion, Maintenance expressly includes the right of entry with reasonable prior notice (except in an Emergency Situation) by the party seeking to perform Maintenance, and, its contractors, agents and employees into any areas thereof and the right to perform Maintenance as, and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however

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that the responsibility to repair any damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to the building standard condition existing immediately prior to such damage.

**9.3 Damage Affecting Only Retail Portion or Hotel Portion.** If any portion of the Building is damaged by fire or other casualty and (a) to the extent such damage occurs within the Retail Portion only and does not affect Hotel Easement Facilities or Hotel Owned Facilities or (b) to the extent such damage occurs within the Hotel Portion only and does not affect Retail Easement Facilities or Retail Owned Facilities, then, subject to the requirements of any Mortgagee, any such damage shall be repaired and restored by the Owner of the portion of the Building in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of ARTICLE 17 hereof, be entitled to withdraw any insurance proceeds (including deductible amounts and self-insurance amounts) held by the Depository, by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration obligation hereunder, and such failure adversely and materially affects an Easement in favor of the other Owner or services to be furnished the other Owner under ARTICLE 5 hereof (or there is a reasonable likelihood of the same), then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) days after the receipt of such notice, any such work of 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 17 hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage for application to the cost and expense of any such repair or restoration, and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all reasonable costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds. Repair and restoration under this Section 9.3 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 14. Any such repair and restoration under this Section 9.3 shall be performed in a manner so that the damaged portion of the Property is rebuilt in a manner such that it is functionally equivalent to the condition of said damaged portion prior to the casualty, unless prohibited by Law or unless the other Owner otherwise agrees.

**9.4 Joint Damage.** If the Building is damaged by fire or other casualty and if the provisions of Section 9.3 hereof are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of Section 9.3, then, to the extent such damage does not fall within any of such categories, the repair and restoration of only that portion of such damage which does not fall within those categories shall be the joint responsibility of the Owners and that portion of the work which does fall within any such category shall continue to be governed by Section 9.3. The shared repair and restoration work not governed by Section 9.3 shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a contractor or

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contractors jointly selected by the Owners, 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 downtown Chicago. With regard to the shared work, participation by the Owners 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, its actual areas or Facilities damaged. In the event the Owners fail to agree upon the selection of a contractor or contractors with regard to shared work, the Owners shall request the advice of the Architect. If, after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be an Arbitrable Dispute. The plans and specifications for all such shared repair and restoration work shall be prepared by the Architect, unless the Owners otherwise agree upon another Person to prepare them in accordance with instructions given by the 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 the Building as constructed prior to the damage, unless prohibited by Law or unless the Owners otherwise agree. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to the Owners a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Owners otherwise agree, any contractor or contractors shall work under the supervision of the Architect (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 Owners (whose approval shall not be unreasonably withheld, conditioned or delayed), as such repair and restoration progresses, to disburse in accordance with ARTICLE 17 hereof, the insurance proceeds (including deductible) held by the Depository and any other monies deposited with the Depository pursuant to Section 9.6 hereof for application against the cost and expense of any such repair and restoration.

9.5 **Cost of Repairs.** If the cost and expense of performing any repair and restoration provided for in Section 9.4 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 as follows: first, in such proportion as may be required by the provisions of ARTICLE 5 providing for allocation of replacement costs of Facilities and for the Net Capitalized Cost of Replacement of Easement Facilities, until such costs are recouped, and second, each Owner shall bear 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 8 and, therefore is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which the other 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.

9.6 **Deposit of Costs.** In any instance of repair or restoration pursuant to Section 9.4 or Section 9.5 hereof, Retail Owner or Hotel Owner, if such Owner has an interest in the repair or restoration, 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,

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unless a construction contract providing for the performance of such repair and restoration at a stipulated sum or a guaranteed maximum price has theretofore been executed. If said estimate, stipulated sum guaranteed maximum price or 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, an Owner may, at any time, give notice to the other Owner demanding that such other Owner deposit with the Depository the amount of such excess cost and expense attributable to such other Owner pursuant to Section 9.5. An Owner maintaining deductible amounts shall deposit the deductible amounts. In lieu of depositing its share of such excess amount or such deductible amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owner, the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit satisfactory to the other Owner and its Mortgagee (if any) in favor of the Depository in the face amount of the share owed, or an irrevocable, unconditional loan commitment, satisfactory to the other Owner and its Mortgagee (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 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 Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 9.6, or fails to deliver the security provided for above within ten (10) days after receipt of the other Owner's written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

**9.7 Excess Insurance Proceeds.** Upon completion of the repair and restoration of any damage to the Building, subject to the rights of any Mortgagee with respect to the applicable Owner's share of any such available insurance proceeds, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by such Owner or by such 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 Owner's portion of the Building and Owned Facilities by the insurer or the Owners to the total insurance proceeds made available by the insurer or the Owners for the repair and restoration.

**9.8 Agreement Not to Repair.** If the Building is destroyed or substantially damaged, Retail Owner and Hotel Owner may, at their option, agree in writing not to rebuild, repair or restore the Building, subject to the written approval of the Mortgagees (which approval may be granted or withheld by each such Mortgagee in its sole and absolute discretion). Upon agreement between the Owners not to rebuild and receipt of the written approval of their respective Mortgagees, the Building shall be demolished in compliance with all applicable Laws. In such event the available insurance proceeds, other than insurance proceeds used to demolish

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the Building, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner or by such 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 Building, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building and Owned Facilities to the total insurance proceeds paid by reason of such damage. If the Owners agree not to rebuild, repair or restore the Building, the rights of the Owners to receive available insurance proceeds, if any, shall be subject to the rights of the Mortgagees with respect to the applicable Owner's share of any such available insurance proceeds. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Section 9.4, Section 9.5, Section 9.6 and Section 9.9 are applicable except that demolition, and not construction, shall be performed.

9.9 **Cost Defined.** For purposes of this ARTICLE 9, architects' and engineers' fees, attorneys' fees, consultants' fees, Insurance Costs, 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.

9.10 **Common Ceilings, Floors, Walls and Doors.** The horizontal boundaries between the Retail Parcel and the Hotel Parcel have generally been established based on measurement to the inside or outside surface of walls separating the Retail Parcel and the Hotel Parcel existing on the date of this Declaration. Vertical boundaries are generally shown on the Survey based on measurement from the top of the floor slab of one level to the top of the floor slab of the next level existing on the Effective Date. Any raised flooring, its supports, and the space between the floor slab and the raised flooring is entirely in the Parcel owned by the Owner in whose Parcel the raised floors are located. Notwithstanding the foregoing, the obligations of Retail Owner under Section 9.1 and Hotel Owner under Section 9.2 shall be deemed to include an obligation to the center of common floor slabs and to the center of common walls (including doors), regardless of the exact location of the boundary; provided, however, that the Owners shall coordinate work with respect to common floor slabs and common walls 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.

9.11 **Required Work.** In connection with the renovation and redevelopment of the Hotel Parcel into a hotel, Hotel Owner has, at its cost, contracted with third party contractors to complete certain work to the Building as described more specifically on Exhibit 9.11 attached hereto and made a part hereof (the "Required Work"). Hotel Owner and Retail Owner acknowledge and agree that the Required Work is required to be completed in order to, *inter alia*, obtain approvals to occupy and use the Building under Laws. Accordingly, Hotel Owner shall complete the Required Work within a reasonable period after the Effective Date, but in any event no later than the dates set forth in Exhibit 9.11 for the components of the Required Work. In the event that Hotel Owner fails to complete any component the Required Work by the respective date set forth in Exhibit 9.11, Hotel Owner shall be a Defaulting Owner with respect thereto and Retail Owner shall have the right to perform the same (without limiting any other rights or remedies of Retail Owner) until such time as the Hotel Owner cures its failure to perform. Retail Owner shall be entitled to payment from the Hotel Owner, within fifteen (15) days after written demand, for all costs and expenses (including reasonable attorneys' fees) paid or incurred by the Retail Owner with respect to the Required Work.

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## ARTICLE 10 LIENS, DEBTS, INTEREST AND REMEDIES

10.1 **Failure to Perform.** If, at any time, an Owner fails within fifteen (15) 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 Retail Property or Hotel Property, as applicable, owned by the Defaulting Owner and (b) for a default under ARTICLE 9 a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Retail Property or Hotel Property, as applicable, or otherwise under insurance policies carried pursuant to ARTICLE 8 hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this ARTICLE 10. 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 Retail Property or Hotel Property owned by the Defaulting Owner, except a Prior Lien. A "**Prior Lien**" means a lien for ad valorem real estate taxes and/or a Mortgage which has been recorded against the Retail Property or Hotel Property, as applicable, prior to the time of recording of the Creditor Owner's notice of lien.

### 10.2 **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 this ARTICLE 10) shall in any way affect or diminish any lien arising pursuant to this ARTICLE 10, and any lien which would have arisen against any property pursuant to this ARTICLE 10 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this ARTICLE 10) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

(B) If, at any time, an Owner as a Creditor Owner has recorded a notice of lien under Section 10.1 of this Declaration against any other Owner's portion of the Property, 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 sale of such portion of the Property or part or interest the lesser of (a) an amount sufficient to satisfy that portion of the unpaid Default Amount and (b) the entire proceeds from the sale, minus any amount paid to satisfy the Prior Lien. Following any such sale, the Creditor Owner shall continue to have (x) a lien on the Defaulting Owner's portion of the Property and (y) the rights with respect to the proceeds of any subsequent sales of such Defaulting Owner's portion of the Property, as provided in this ARTICLE 10, to secure repayment of any remaining portion of the Default

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Amount secured by the lien that applies to such Defaulting Owner's portion of the Property. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under ARTICLE 11, then the proceeds which a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depository or other escrowee acceptable to the Creditor Owner and held for disbursement at the joint order of the applicable Owners or as directed by court order or by the arbitrator in such arbitration.

10.3 **Mortgagee's Subrogation.** A Mortgagee of all or any portion of the Retail Property or the Hotel Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this ARTICLE 10 affecting the property secured by its Mortgage and, at its option to receive an assignment of such lien upon payment of the amount secured by such lien (unless such amount is otherwise secured by its Mortgage).

10.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner 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 fifteen percent (15%) per annum.

10.5 **Cumulative Remedies.** The rights and remedies of an Owner provided for in this ARTICLE 10 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, the other Owner's obligation to execute or record any document which 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, 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.

10.6 **No Set-Off.** Each claim of an 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.

10.7 **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.

10.8 **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.

10.9 **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, including those set forth in Sections 5.6

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and 7.3, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral notice if written notice is impossible or impracticable, 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 attorneys' 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 non-performance of an obligation, such provision shall control the provisions of this Section 10.9.

## **ARTICLE 11 ARBITRATION**

11.1 **Disputes Subject to Arbitration; Arbitration Procedure.** All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration:

- (A) constituting a monetary claim involving an amount as to any one claim not exceeding \$250,000 (in 2015 Equivalent Dollars); or
- (B) expressly made an Arbitrable Dispute or subject to arbitration under this ARTICLE 11 by the terms of this Declaration; or
- (C) involving any of the following matters:
  - (1) selection of an insurance company or apportionment of insurance premiums under Section 8.1 and Section 8.2 hereof;
  - (2) appointment of a contractor or contractors pursuant to Section 9.4 or Section 13.4 hereof;
  - (3) replacement of the Architect pursuant to Section 18.1 hereof;
  - (4) other failure to agree on a matter described in Section 11.2, Section 16.1, Section 18.1 or Section 18.4 which this Declaration expressly requires the Owners to jointly decide or agree upon;
  - (5) disputes arising generally under ARTICLE 5, ARTICLE 8 (other than Section 8.1), ARTICLE 9 or ARTICLE 13; or
  - (6) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to Arbitration,

which (with respect to any of such matters) shall not be resolved within sixty (60) days after it shall arise (or such other shorter or longer time period expressly provided herein), shall be submitted for arbitration to one (1) arbitrator at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules for

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expedited arbitration. Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within thirty (30) days, and proceedings shall commence within thirty (30) days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under clauses (C)(1), (2) or (3) 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 which the parties fail to agree upon which 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 the issue and the provisions of this Declaration, if any, which require the arbitrator to make a particular finding. 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. Such arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the Mortgagees of the filing of a claim and demand in arbitration within five (5) days thereafter. Owners may not seek injunctive relief in the arbitration. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners; provided that the arbitrator may include in its award any of the fees and costs of arbitration. 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 10.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes, which are not incidental to the Arbitrable Dispute and not easily divisible from it, the dispute shall be submitted to arbitration.

11.2 **Monetary Adjustment (Equivalent Dollars).** For purposes of this Declaration, "2015 Equivalent Dollars" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2015. The 2015 Equivalent Dollars of any amount shall be determined on January 1 of the fifth (5<sup>th</sup>) full calendar year following the Effective Date, and, thereafter, at five (5)-year intervals, by multiplying said amount by one (1) plus a fraction (expressed as a percentage) (but not less than zero), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 2015 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, 2015. 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.

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## ARTICLE 12 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 non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, flood, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in downtown Chicago, war or national defense preemptions, acts of God, energy or other Utility (including, without limitation, chilled water) shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in downtown Chicago (or under any contract for chilled water or other utilities between any Owner and any Utility provider) (other than inability to make payment of money) ("**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 12, 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. If non-performance is due to an Unavoidable Delay affecting the Non-Performing Owner which does not affect the other Owner's self-help remedy provided for elsewhere in this Declaration and which is otherwise exercisable for such non-performance, then notwithstanding such Unavoidable Delay, the other Owner shall still be entitled to the self-help remedy exercisable only under reasonable circumstances with respect to those obligations to have been performed by the Non-Performing Owner which are the subject of Unavoidable Delay.

## ARTICLE 13 CONDEMNATION

13.1 **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 the Retail Property or the Hotel Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this ARTICLE 13, the "**Award**") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Retail Property or the Hotel Property, as applicable, shall be performed, in accordance with the requirements of this ARTICLE 13. The Owners shall cooperate with one another to maximize the amount of the Award.

13.2 **Payment of Award to Depositary; Temporary Taking Awards.** All Awards resulting from the taking of all or any part of the Retail Property or the Hotel Property, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depositary by the Owners, regardless of the Owner who received the Award, except as otherwise provided in Section 13.3, and the Depositary shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space not including Retail Easement Facilities or Hotel Easement Facilities or affecting services described in Section 5.1 or Section

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5.2 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.

**13.3 Taking of Only One Parcel.** In the event of (A) a taking (other than a temporary taking) of a part of the Retail Property or Retail Owned Facilities only (not including any Hotel Easement Facilities or Hotel Owned Facilities) or (B) a taking (other than a temporary taking) of a part of the Hotel Property or Hotel Owned Facilities only (not including any Retail Easement Facilities or Retail Owned Facilities), then, subject to the provisions of Section 13.6 hereof, the Owner of the portion of the Retail Property or Hotel Property, as applicable, or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Retail Property or Hotel Property, as applicable, or the Owned Facilities to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of the other Owner essential to the other Owner's operations or the services to be furnished the other Owner under ARTICLE 5. 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 Retail Property or Hotel Property, as applicable, or Owned Facilities in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of ARTICLE 17 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 20.11 and to Mortgages encumbering such Property. If the cost of repair or restoration is estimated to be less than \$250,000 (in 2015 Equivalent Dollars), then the Award need not be paid to the Depositary. 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 Owner under ARTICLE 5 hereof, then: (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such 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 17 hereof, be entitled to withdraw any Award and any other monies held by the Depositary 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 13.3 constitute 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 14.

**13.4 Repair and Restoration by All Owners.** In the event of a taking other than (A) a temporary taking described in Section 13.2 hereof, (B) a taking described in Section 13.3 hereof, or (C) a taking of all or substantially all of the Building, or all of the Parcels, then, subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore

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the remainder of the Building in accordance with plans and specifications (hereinafter described) approved by the Owners. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owners by a contractor or contractors jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in the Retail Portion, then the approval of Hotel Owner shall not be required with respect to the plans and specifications therefor which do not constitute Alterations requiring consent of the other Owner under ARTICLE 14, nor shall the consent of Hotel Owner be required with respect to the selection of a contractor. In such event, however, Retail Owner shall consult with Hotel Owner regarding those matters. If such repair and restoration is to be performed solely in the Hotel Portion, then, the approval of Retail Owner shall not be required with respect to plans and specifications therefor which do not constitute Alterations requiring consent of the other Owner under ARTICLE 14, nor shall the consent of Retail Owner be required with respect to the selection of a contractor. In such event, however, Hotel Owner shall consult with Retail Owner regarding those matters. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree. Such plans and specifications shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole, with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easement or covenant under this Declaration is 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 ARTICLE 2 and ARTICLE 3 hereof and for the furnishing of services under ARTICLE 5 hereof. The Architect will furnish to each of the Owners (but only if and to the extent such Owner's approval is required) a set of such plans and specifications for their approval. Unless the Owners otherwise agree, the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, 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 proceeds, to disburse, in accordance with ARTICLE 17 hereof, any Award paid to the Depositary for application to the cost and expense of such repair and restoration.

13.5 **Excess Award.** The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6 hereof). 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 or Owners (as the case may be) (including parties with an interest in the other Owner or Owners' portion of the Property); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 20.11. If there is no apportionment in any judicial or administrative proceeding, the Owner shall petition for such apportionment, if possible. Otherwise, the Owner 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 agreement shall constitute an Arbitrable Dispute.

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13.6 **Demolition.** If, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), any of the Owners reasonably determines that its portion of the Building can no longer be repaired or restored or operated on an economically feasible basis, then such Owner shall notify the other Owner of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Building as may be required by Section 13.3 and Section 13.4 hereof. However, such Owner not repairing or restoring shall demolish, repair or restore its portion of the 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 Owner or structural support for the other portion of the Building. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 13.4 hereof are applicable.

13.7 **Allocation of Award.** In the event of a taking of all or substantially all of the Retail Property or the Hotel Property, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking, and paid to the Owners, subject to the rights of their respective Mortgagees (if any), in accordance with said 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 20.11.

## ARTICLE 14 ALTERATIONS

### 14.1 **Permitted Alterations.**

(A) An Owner (hereinafter in this ARTICLE 14, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this ARTICLE 14, "Alterations") to the part of the Building within such Altering Owner's portion of the Property, provided that such Alterations comply with (i) all of the provisions of this ARTICLE 14 and (ii) the terms and conditions of any Mortgage encumbering Altering Owner's respective Parcel. Alterations shall also include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this ARTICLE 14. Replacement of Facilities may be made by an Altering Owner without consent of the other Owner, subject to the provisions of Section 5.9. The provisions of this ARTICLE 14 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 ARTICLE 4, ARTICLE 5, ARTICLE 6, ARTICLE 9 and ARTICLE 13 hereof, which are governed by such provisions only and not this ARTICLE 14 unless also designated in such Articles as "Alterations" to be governed by this ARTICLE 14.

(B) Alterations shall not be made without the prior written consent of the other Owner 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 unreasonably interrupt such other Owner's use or enjoyment of any Easement;

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(2) during their performance or upon their completion, unreasonably degrade or diminish services to the other Owner under ARTICLE 5;

(3) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to ARTICLE 5 hereof;

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

(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 if the other Owner could be adversely affected by such Alterations;

(6) result in a material change in appearance to the Facade; provided that the approval of the Retail Owner shall not be required in connection with the remodeling or renovation of the Tower Addition;

(7) deny or materially impede access to the Hotel Property or otherwise materially disrupt the occupancy and business conducted therein;

(8) materially hinder or materially interfere with any Owner's maintenance obligations and rights pursuant to ARTICLE 5 hereof; or

(9) materially and adversely affect any common areas within the Building or the Property or any Shared Systems.

(C) If at any time the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of any other Owner) the consent of the other Owner, then, before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to the other Owner a copy of the plans and specifications (and, if any Structural Supports will be affected, an engineering report describing the effect on such Structural Supports) showing the proposed Alterations and a reference to this Section 14.1. An Altering Owner may also at any time request confirmation from the other Owner that its consent is not required with respect to proposed Alterations if such Alterations do not require its consent, and such confirmation shall be given within thirty (30) days after the request is made. Failure to respond during such thirty (30)-day period shall be deemed confirmation that no consent is required. If such other Owner consents to such Alterations or, in any case where consent is required, does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within thirty (30) 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 thirty (30)-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 fourteen (14) days to respond from the date the other Owner receives such

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additional information or (ii) an extension of the time to respond, which extension of time shall not exceed fourteen (14) days from such thirty (30)-day response period. 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 14.1(A) or Section 14.1(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 14.1(A) or Section 14.1(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 14.1(A) or Section 14.1(B), then, the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (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 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) In making Alterations, Retail Owner and Hotel Owner 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 of Chicago Building Code and the City of Chicago Landmarks Preservation Ordinance, (iii) comply with all of the applicable provisions of this Declaration, (iv) procure and maintain all necessary permits, licenses, approvals and authorizations from all applicable governmental authorities, (v) comply with all other recorded restrictions, covenants, conditions, and other encumbrances affecting the Property, and (vi) perform such work in a manner to keep labor harmony and prevent any work stoppages, strikes, picketing or other labor unrest or protest. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Building in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would 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.

14.2 **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 of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owner. An Altering Owner shall send copies of any building permits to the other Owner at such other Owner's written request. If joinder by such 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 such 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 such other Owner's execution of the application, permit or other instrument. If an Owner fails to execute said application or

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instruments when required hereunder to do so, and there is no dispute between the Owners concerning the affected Alterations, the Altering Owner is hereby irrevocably appointed attorney-in-fact of the other Owner (such power of attorney being coupled with an interest and hence, irrevocable) to execute said application or instruments on behalf of such other Owner.

14.3 **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 of the Retail Property and the Hotel Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Lien 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 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 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

14.4 **Tower Addition, Hotel Improvements and Retail Improvements.** The Hotel Owner may construct the Hotel Improvements and Tower Addition in accordance with its plans and the Retail Owner may construct the Retail Improvements, without the consent or approval of any other Owner in compliance with the following terms and provisions:

(A) Any work performed by Hotel Owner or Retail Owner's contractors shall be done in a good and workmanlike manner and shall comply with all applicable Laws, and all industry codes and standards.

(B) The Hotel Owner or Retail Owner, as applicable, shall obtain and provide evidence that the insurance required by this Declaration has been obtained, before commencing any work.

(C) All necessary building permits for the work in question (including, if required, approvals from the Commission on Chicago Landmarks) shall have been obtained by the Hotel Owner or Retail Owner, as applicable.

(D) The Hotel Owner or Retail Owner, as applicable, shall be responsible for all costs and expenses attributable to their work and shall promptly discharge any liens filed, if any against any other portion of the Property.

(E) The Hotel Owner or Retail Owner, as the case may be, and their respective contractors shall make all efforts and take all steps appropriate to construction activities undertaken in any comparable building, as the case may be, so as not to unreasonably interfere with the operation of the other Property. Hotel Owner or Retail Owner, as the case may be, and their contractors shall take reasonable precautionary steps to minimize dust, noise, disruption of services and construction traffic and to protect their facilities and the facilities of others affected by the work and to properly police same.

(F) The Hotel Owner or Retail Owner, as the case may be, and their respective contractors and subcontractors shall comply with all applicable provisions of this Declaration.

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(G) Notice of such work shall be provided to the Hotel Owner or Retail Owner, as the case may be, prior to the commencement of such work, which notice shall contain the anticipated commencement and completion date of such work, the hours during which such work will be performed, and the location and general scope of the work to be performed.

(H) No work shall adversely impact the structural safety or integrity of the Building or the other Owner's portion of the Building.

(I) The Hotel Owner shall construct the Hotel Improvements and Tower Addition in accordance with the requirements of any Mortgage on the Hotel Parcel and related loan documents, and Retail Owner shall construct the Retail Improvements in accordance with the requirements of any Mortgage on the Retail Parcel and related loan documents.

Notwithstanding anything to the contrary contained in this Declaration, Hotel Owner and Retail Owner acknowledge and agree that the construction of the Hotel Improvements, the Tower Addition and the Retail Improvements may have a material impact on certain provisions of this Declaration, including without limitation, the Easement Exhibits, the Applicable Percentage and various Building systems and Building operations. Accordingly, in connection with the construction of the Hotel Improvements, the Tower Addition and the Retail Improvements, Hotel Owner and Retail Owner shall amend this Declaration at all appropriate times to incorporate the terms and conditions reasonably agreed to by the Owners regarding the changes required hereto in connection with such construction.

## **ARTICLE 15** **ESTOPPEL CERTIFICATES**

15.1 **Estoppel Certificates.** Each Owner shall, from time to time, within fifteen (15) days after written request from any other Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 20.11(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 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 Exhibit 5.5 which in the aggregate are less than \$50,000 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;

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(D) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to ARTICLE 5 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 is 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 requisite 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 requisite 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 11 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 19 hereof; and

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

## **ARTICLE 16** **DEPOSITARY**

16.1 **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 condemnation 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. Any Depositary selected by the Owners shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with offices in Chicago, Illinois or other bank or trust company agreed to by the Owners in writing. Either 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 such Owner, the disagreement shall become an Arbitrable Dispute. The Depositary shall be entitled to receive from each of the Owners said Owner's equitable share of the Depositary's reasonable fees and expenses for acting as Depositary, as such share is agreed to by the Owners, and may 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

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arrangement within thirty (30) 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 16.1 and made part hereof.

**16.2 Liability of Depositary.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence. The Depositary's reliance upon advice of independent competent 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 condemnation Award 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 condemnation Award 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 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

**16.3 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 the Owners have requested, in connection with a specified deposit of funds with the Depositary, 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 said Owners, then the Depositary, within thirty (30) days after request from an Owner given to the Depositary and to the other Owner, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within ninety (90) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary. Unless the Depositary shall have undertaken to pay interest thereon, monies received by the Depositary pursuant to any of the provisions of this Declaration shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

**16.4 Indemnification of Depositary.** In consideration of the services rendered by Depositary, the Owners jointly and severally hereby agree to indemnify and hold harmless the Depositary 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 Depositary's duties hereunder or in the defense of any claim or claims made against Depositary by reason of its appointment hereunder, except where due to the negligence of the Depositary or actions not taken in good faith by the Depositary. Where the Depositary 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 Depositary in connection with such duties of the Depositary.

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16.5 **Resignation of Depository.** The Depository may resign by serving not less than thirty (30) days' prior written notice on all of the Owners and Mortgagees. Within fourteen (14) days after receipt of such notice, the Owners jointly shall, in the manner set forth in Section 16.1, appoint a substitute who qualifies under Section 16.1 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 shall 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 fourteen (14) 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 16.1 hereof.

## ARTICLE 17

### **DISBURSEMENTS OF FUNDS BY DEPOSITARY**

#### 17.1 **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 repair, restoration or demolition (the "work") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners, 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 has either (a) been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of more than one (1) Owner (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, or at an off-site location if approved by the applicable Owner and its Mortgagees;

(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

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

(B) Upon:

(1) compliance with the provisions of Section 17.1(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 and the Owners of the lien waivers and other documentation, and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and any applicable Mortgagee) insuring over possible mechanics' lien claims relating to work in place and the continued priority of the liens in favor of the Owners and any applicable Mortgagees, the Depository shall, out of the monies so held by the Depository, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owner, 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 17.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

**17.2 No Lien or Consent by Contractor.** No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owners and the Mortgagees, shall have any interest in or right to or lien upon any funds held by the Depository. The Owners 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, materialman, engineer, architect or any other person whatsoever. If at any time the Owners shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions, and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

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## **ARTICLE 18** **ARCHITECT**

18.1 **Appointment of Architect.** When and if required by the provisions of this Declaration, the Owners, upon the prior written consent of the Mortgagees (which consent shall not be unreasonably withheld, conditioned or delayed), shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). The Architect shall, upon its appointment, execute an agreement with the Owners in the form required by the Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then serving Architect to be replaced without cause upon thirty (30) days' prior written notice. The Owners jointly may replace the Architect for any reason. If the Owners do not jointly desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve notice upon the other Owner requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform fairly, diligently or competently. If, in the opinion of the Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 18.1, the Owner receiving such notice and objecting to the appointment of a new Architect shall notify the requesting Owner of its objection in writing within thirty (30) days after receipt of such notice from the requesting Owner. If, within thirty (30) 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 replacement of the Architect, 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 sixty (60) days' prior written notice to the Owners.

18.2 **Notice of Submission of Dispute to Architect.** In any instance when the Architect serving pursuant to Section 18.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, an Owner may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owner. The Architect shall, except in an Emergency Situation, afford each Owner, and any attorney or other representative designated by such Owner an opportunity to furnish information or data or to present such party's views. 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.

18.3 **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

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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.

18.4 **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 the 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. If an Owner shall fail to pay its allocable share of any fees or expenses of the Architect within thirty (30) days after receipt of any invoice therefor from the Architect, then, the other Owner may pay the same and the Owner failing to pay shall, within thirty (30) days after written demand for reimbursement, reimburse the other Owner for any such payment.

## ARTICLE 19 NOTICES AND APPROVALS

19.1 **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") that an Owner is required, permitted or desires to give or make or communicate to any other Owner shall be in writing and shall be deemed to have been given (i) if and when personally delivered (including messenger service), or (ii) on the first business day after being deposited with a commercially recognized national overnight delivery service, and addressed to a party at its address set forth below or to such other address the Owner to receive such notice may have designated to the other Owner by notice in accordance herewith:

If to Retail Owner: AG-OCG 360 North Michigan Retail Owner L.L.C.  
c/o Angelo, Gordon & Co., L.P.  
245 Park Avenue, 24<sup>th</sup> Floor  
New York, New York 10167  
Attention: Ryan Klenovich

And: c/o Oxford Capital Group, LLC  
350 West Hubbard, Suite 440  
Chicago, Illinois 60654  
Attention: John W. Rutledge

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With a copy to: Duval & Stachenfeld LLP  
 555 Madison Avenue, 6<sup>th</sup> Floor  
 New York, New York 10022  
 Attention: Terri L. Adler, Esq. and File Manager  
 File No.: 2009.1822

And: Sheppard Mullin Richter & Hampton LLP  
 70 West Madison Street, 48<sup>th</sup> Floor  
 Chicago, Illinois 60602  
 Attention: Lawrence C. Eppley, Esq.

If to Hotel Owner: AG-OCG 360 North Michigan, L.L.C.  
 c/o Angelo, Gordon & Co., L.P.  
 245 Park Avenue, 24<sup>th</sup> Floor  
 New York, New York 10167  
 Attention: Ryan Klenovich

and: c/o Oxford Capital Group, LLC  
 350 West Hubbard, Suite 440  
 Chicago, Illinois 60654  
 Attention: John W. Rutledge

With a copy to: Duval & Stachenfeld LLP  
 555 Madison Avenue, 6<sup>th</sup> Floor  
 New York, New York 10022  
 Attention: Terri L. Adler, Esq. and File Manager  
 File No.: 2009.1822

and: Sheppard Mullin Richter & Hampton LLP  
 70 West Madison Street, 48<sup>th</sup> Floor  
 Chicago, Illinois 60602  
 Attention: Lawrence C. Eppley, Esq.

and to any Mortgagee which has complied with the notice provisions of Section 20.11 hereof.

An Owner may designate a different address from time to time, provided however it has given at least thirty (30) days' advance notice of such change of address. Failure to give notices to an Owner's or Mortgagee's counsel whom such Owner or Mortgagee has requested that copies be delivered to shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "Owner" of its respective portion of the Building, and the succeeding Owner of that portion of the Building shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's portion of the Building, as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City of Chicago department or agency having jurisdiction over City

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of Chicago addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Building in question.

19.2 **Multiple Owners.** If at any time the interest or estate of Retail Owner or Hotel Owner shall be owned by more than one Person (hereinafter collectively referred to as “multiple owners”), the multiple owners shall give to the other Owner a written notice, executed and acknowledged by all of the multiple owners, in form proper for recording, which shall (a) designate one Person, having an address in the State of Illinois to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners, and (b) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written notice given by all of their multiple owners or their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this ARTICLE 19, collectively referred to as “legal process”), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process as stated above.

## ARTICLE 20 GENERAL

20.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Building and the harmonious relationship between the Owners and to protect the value of each Owner’s respective portion, estate or interest in the Building. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Declaration, except such information as an Owner may reasonably deem confidential or privileged or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the Effective Date, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as the other Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder.

20.2 **Severability.** The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or

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affect in any manner the validity, enforceability or effect of the remaining provisions of this Declaration.

20.3 **Headings.** The headings of Articles and Sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

20.4 **Amendments to Declaration.** Except as otherwise provided in Section 20.15, this Declaration may be amended or terminated only by an instrument signed by the then Retail Owner and the then Hotel Owner and consented to by the Mortgagees. Any amendment to or termination of this Declaration shall be recorded with the Recorder. So long as any portion of the Property is submitted to the Act, the Condominium Association for such portion shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners (as the successor to Retail Owner or Hotel Owner, as the case may be), which amendments or termination shall be binding on all Unit Owners (as the successor to Hotel Owner or Retail Owner, the case may be).

20.5 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for the term of this Declaration, which shall be perpetual to coincide with the perpetual Easements provided for under this Declaration (or if the Law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If the Law prescribes such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by Law, for successive periods of twenty (20) years, subject to amendment or termination as set forth in Section 20.4. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Mayor Rahm Emanuel, Mayor of the City of Chicago, Illinois.

20.6 **Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building, subject to an Easement, unless the Owner benefited by such Easement states in writing its intention to abandon the Easement, provided the consent of the Mortgagees shall also be required with respect to any such abandonment.

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

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20.8 **Name of Building.** The Building shall be known as "360 North Michigan Avenue". However, Hotel Owner shall have the right to change the name of the Building from time to time, without prior notice to, or the consent of, the Retail Owner, subject to any City of Chicago restrictions which may be in place, such as landmark designation restrictions.

20.9 **No Third-Party Beneficiary.** This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

20.10 **Incorporation.** Each provision of the Recitals to this Declaration and each Exhibit and Appendix attached hereto is hereby incorporated in this Declaration and is an integral part hereof.

20.11 **Notice to Mortgagees; Rights of Mortgagee.**

(A) The term "Mortgage", as used herein, shall mean any Mortgage (or any trust deed) of an interest in the Property given primarily to secure the repayment of money owed by the mortgagor. The term "Mortgagee", as used herein, shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed).

(B) If a Mortgagee shall have served on the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, or specified the same in any consent attached hereto, such Mortgagee shall be given a copy of each and every notice required to be given by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the other, at the address last furnished by such Mortgagee. The address of any existing Mortgagee shall be as set forth in its consent to subordination attached hereto. After receipt of such notice from a Mortgagee, no notice thereafter given by either party shall be deemed to have been given unless and until a copy thereof shall have been so given to the Mortgagee. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

(1) The proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, upon notice from a Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository in accordance with the provisions of this Declaration.

(2) If an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Declaration with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its Mortgagee and such appointment and action shall be recognized in all respects by the other Owner.

(3) Except as otherwise provided in Section 20.15, and only to the extent required by the terms of any applicable Mortgage, no termination or material amendment or material modification of this Declaration shall be effective

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without the prior written consent of each Mortgagee, which consent shall not be unreasonably withheld.

(4) No Owner may elect to restore or not restore a portion of the Property pursuant to ARTICLE 9 or ARTICLE 14 without first obtaining the prior written consent of its Mortgagee, if any; provided, that to the extent that an Owner is required to restore its Property pursuant to ARTICLE 9 or ARTICLE 14, then, the consent of any such Mortgagee shall not be required with respect to such restoration.

(C) A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Declaration by the Owner whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach to such mortgagee Owner, plus the Mortgagee shall: (i) have a period of fourteen (14) days more than given to the Owner whose property is secured by the Mortgagee's Mortgage in each instance in the case of a monetary default and thirty (30) days more than given to such Owner in each instance in the case of any other default, for remedying the default or causing the same to be remedied, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such default or cause the same to be remedied. In addition, the other Owner agrees not to exercise any right or remedy to which it may be entitled as a Creditor Owner, except exercise of a self-help right in an Emergency Situation, while the Mortgagee cure rights are available in accordance with this subsection.

(D) Should any prospective Mortgagee require a modification or modifications of this Declaration, which modification or modifications will not cause an increased cost or expense to the other Owners whose property is not subject to the Mortgage of such Mortgagee or in any other way materially and adversely change the benefits, rights and obligations of such Owner, then and in such event, such Owner agrees that this Declaration may be so modified and agrees to execute whatever documents are reasonably required therefor and deliver the same to the mortgagee Owner within ten (10) business days following written requests therefor by the mortgagee Owner or prospective Mortgagee.

**20.12 Coordination with Tenants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall coordinate all requests and contacts between tenants of its portion of the Building and the other Owner relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render such other Owner liable either to such tenants or to the Owner for acts of such tenants or such other Owner.

**20.13 Waiver of Mechanic's Liens by Owners.** The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of or right to liens which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to, the Property or improvements owned by the other Owner or any part thereof or with respect to the estate or interest of any person whatsoever in the Property or improvements

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owned by the other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery, furnished or to be furnished thereto pursuant to this Declaration, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or sub-subcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to ARTICLE 4 or ARTICLE 5 of this Declaration. The parties agree that, to the extent permitted by Law, the legal effect of this Declaration is that no mechanic's lien or claim may be filed or maintained by an Owner under the Illinois Mechanic's Lien Act with respect to that portion of the Property or improvements owned by the other Owner, except as set forth above with regard to ARTICLE 4 and ARTICLE 5 of this Declaration. The provisions of this Section 20.13 are not intended to waive any lien created under ARTICLE 10.

20.14 **Binding Effect.** Except as otherwise provided herein, the Easements, covenants and restrictions created under this Declaration shall be irrevocable and perpetual in nature, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

20.15 **Special Amendment.** Hotel Owner reserves, for itself and its successors and assigns, the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved, and granted to Hotel Owner to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, Mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of and a consent to the reservation of, the power to Hotel Owner and its successors and assigns to vote in favor of, make, execute and record Special Amendments.

20.16 **Condominium.**

(A) Upon submission of any portion, but less than all, of the Hotel Parcel to the Act, all rights, approvals, easements and benefits under this Declaration or appurtenant to such portion shall be exercised, to the extent of such portion submitted to the Act, by Hotel Owner on behalf of any Condominium Association and all Unit Owners, except for Easements which by their nature are exercisable only by Unit Owners individually.

(B) Upon submission of any portion, but less than all, of the Retail Parcel to the Act, all rights, approvals, Easements and benefits under this Declaration or appurtenant to such portion shall be exercised, to the extent of such portion submitted to the Act, by Retail Owner, on behalf of any Condominium Association and all Unit Owners, except for easements which by their nature are exercisable only by Unit Owners individually.

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(C) Following submission of all of a Parcel to the Act, any action to enforce rights, approvals, obligations, easements, burdens and benefits under this Declaration on behalf of Unit Owners or a Condominium Association shall be taken on behalf of all Unit Owners and the Condominium Association for such Parcel by the respective Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium Association.

(D) All obligations of an Owner under this Declaration shall be the obligations jointly and severally of the Condominium Association and the Unit Owners, collectively with respect to any portion of the Property as has been submitted and remains subject to the Act; provided, however, that no individual Unit Owner (or the holder of any mortgage on such owner's Unit) shall be liable for any obligation of an Owner in excess of a percentage of such liability equal to the percentage interest in the common elements in the respective Property attributable to such Unit as shown in the Condominium Declaration. In any case, such liability of a Unit Owner shall be subject to the provisions of ARTICLE 21 hereof. Upon payment of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Unit on account of such claim shall be deemed released against such Unit Owner's Unit without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner and at the expense of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit. When a Unit is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit shall be joint and several.

(E) Notices under ARTICLE 19 to a Unit Owner or Unit Owners shall be effective if given either to the Condominium Association or to Unit Owners, and notices from a Unit Owner or Unit Owners shall be given by the Condominium Association.

(F) Notwithstanding anything to the contrary contained herein, Retail Owner shall have no right to, and shall not, submit all or any portion of the Retail Parcel to the Act without the prior written consent of Hotel Owner, which may be granted or withheld in Hotel Owner's sole and absolute discretion.

**20.17 Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

**20.18 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party

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Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

20.19 **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that, except as herein specifically provided, no breach of this Declaration shall (i) entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value as to any part of the Property. However, such limitation shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of any such breach.

20.20 **Counterparts.** This Declaration and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document.

## ARTICLE 21 LIMITATION OF LIABILITY

21.1 **Limitation of Liability.** The liability under this Declaration of an Owner or Mortgagee shall be limited to and enforceable solely against the assets of such Owner or Mortgagee constituting an interest in the Property or Owned Facilities (including insurance and condemnation proceeds attributable to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and any security, such as a letter of credit or bond provided pursuant to this Declaration, and no other assets of such Owner or Mortgagee. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and the negative capital account of a partner in a partnership, or a member in a limited liability company, which is an Owner and an obligation of a partner to contribute capital to the partnership, or a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability, shall be asserted or be enforceable against it or any of the beneficiaries under said trust Declaration by reason of any of the covenants or conditions contained herein.

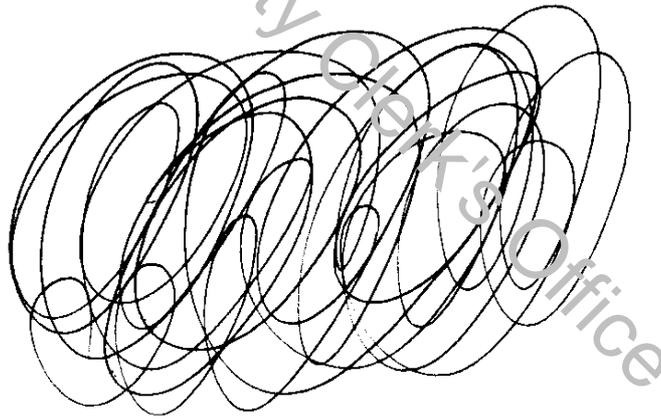
21.2 **Transfer of Ownership.** If an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such Owner), such sale, assignment, transfer or conveyance shall be made solely to Persons or entities whose direct and indirect owners are not Prohibited Persons. In the event of such any such sale, assignment, transfer or conveyance, then (a) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Declaration which accrue under this Declaration from and after the date such Owner sells, assigns, transfers, conveys or otherwise disposes of its interest in such portion of the Property, and (b) the Person who succeeds to such Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Declaration of such Owner both theretofore accruing or which accrue under this Declaration from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property.

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## **ARTICLE 22** **SALE OF RETAIL PROPERTY**

Notwithstanding anything to the contrary contained in this Declaration, the Retail Owner shall not, without the prior written consent of Hotel Owner, which may be granted or withheld in Hotel Owner's sole discretion, sell, convey transfer, assign, or otherwise dispose of the Retail Property unless such sale, conveyance, transfer, assignment or other disposal is of the fee interest in the entirety of the Retail Property. The foregoing requirement does not relate to any leasing or licensing activities to Occupants of the Retail Property in the ordinary course of business. The foregoing restriction shall not apply to (i) any sale or transfer of equity interests in the Retail Owner (if the Retail Owner is an entity); provided that such equity investors shall not be Prohibited Persons or (ii) any Mortgagee of the Retail Parcel that takes title to the Retail Parcel through foreclosure or deed-in lieu of foreclosure, or any initial assignee of such Mortgagee following such foreclosure or deed-in-lieu of foreclosure.

[SIGNATURES FOLLOW ON NEXT PAGE]



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IN WITNESS WHEREOF, the Owners have caused this Declaration to be executed and recorded the day and year first above written.

Retail Owner:

AG-OCG 360 NORTH MICHIGAN RETAIL OWNER, L.L.C., a Delaware limited liability company

By: AG-OCG 360 North Michigan Parent, L.L.C., a Delaware limited liability company, its sole member

By: AG Real Estate Manager, Inc., a Delaware corporation, its manager

By:   
Name: Ryan Klenovich  
Title: Vice President

Hotel Owner:

AG-OCG 360 NORTH MICHIGAN, L.L.C., a Delaware limited liability company

By: AG-OCG 360 North Michigan Parent, L.L.C., a Delaware limited liability company, its sole member

By: AG Real Estate Manager, Inc., a Delaware corporation, its manager

By:   
Name: Ryan Klenovich  
Title: Vice President

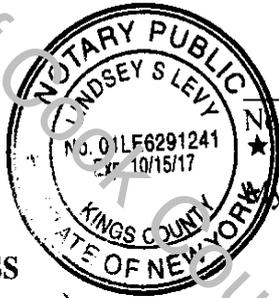
Property of Cook County Clerk's Office

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STATE OF New York )  
 ) SS  
COUNTY OF New York )

I, Lindsey S. Levy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Ryan Klenovich, the Vice President of AG Real Estate Manager, Inc., a Delaware corporation, the manager of AG-OCG 360 North Michigan Parent, L.L.C., a Delaware limited liability company, the sole member of **AG-OCG 360 NORTH MICHIGAN, L.L.C.**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12<sup>th</sup> day of May 2015.



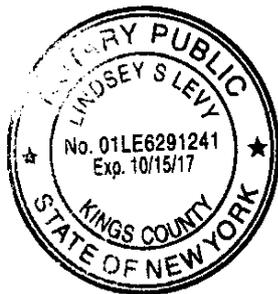
L. Levy  
Notary Public

My commission expires 10/15/17.

STATE OF New York )  
 ) SS  
COUNTY OF New York )

I, Lindsey S. Levy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Ryan Klenovich, the Vice President of AG Real Estate Manager, Inc., a Delaware corporation, the manager of AG-OCG 360 North Michigan Parent, L.L.C., a Delaware limited liability company, the sole member of **AG-OCG 360 NORTH MICHIGAN RETAIL OWNER, L.L.C.**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12<sup>th</sup> day of May 2015.



L. Levy  
Notary Public

My commission expires 10/15/17.

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## CONSENT OF MORTGAGEE

THE UNDERSIGNED, STARWOOD PROPERTY MORTGAGE, L.L.C., a Delaware limited liability company (the "Mortgagee"), holder of that certain Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated on or about May 29, 2015 (the "Mortgage"), and other instruments securing that certain loan in the maximum principal amount of \$44,410,000.00 (the "Loan"), hereby consents to the execution and recording of the attached Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration"), and agrees that the Loan and the Mortgage and other documents securing the Loan are subject and subordinate hereto. The address of Mortgagee is:

Starwood Property Mortgage, L.L.C.  
 c/o Starwood Property Trust, Inc.  
 591 W. Putnam Avenue  
 Greenwich, Connecticut 06830  
 Attention: General Counsel  
 Email: asossen@starwood.com

with a copy to:

Starwood Property Trust, Inc.  
 1601 Washington Avenue  
 Miami Beach, Florida 33139  
 Attention: Asset Management  
 Email: jdiamond@starwood.com

This Consent is intended to, and shall be deemed to constitute a notice from Mortgagee to the Owners for purposes of Section 20.11(B) hereinabove in the Declaration entitling Mortgagee to receive copies of all notices from each Owner to any Owner.

[SIGNATURE PAGES FOLLOW]

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## EXHIBIT 1.1(A)

### LEGAL DESCRIPTION OF HOTEL PARCEL

#### HOTEL PARCEL 1

THAT PART OF LOTS 1 THRU 3, INCLUSIVE, AND THE NORTHEASTERLY HALF OF LOT 4 IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE SOUTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 180.94 FEET TO THE NORTHEASTERLY LINE THEREOF; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 23.34 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 4.83 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 15.58 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 102.42 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT, BEING ALSO NORTHWESTERLY LINE OF MAC CHESNEY COURT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, 98.72 FEET TO THE SOUTHWESTERLY LINE OF SAID TRACT; THENCE NORTH 55 DEGREES 05 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 100.61 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### HOTEL PARCEL 2

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 92.01 FEET TO THE NORTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID

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NORTHERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 22.93 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 4.83 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 25.48 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 9.50 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 102.42 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, ALONG SAID SOUTH LINE, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 3

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE NORTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 34.20 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST 7.94 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 7.95 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST 40.60 FEET TO THE NORTHWESTERLY LINE OF SAID TRACT; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG SAID NORTHWESTERLY LINE, 8.30 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST 22.26 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 16.05 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST 6.66 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 53.88 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 54.15 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST 1.51 FEET; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST 48.26 FEET; THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, 98.72 FEET TO THE SOUTHWESTERLY LINE OF SAID TRACT; THENCE NORTH 55 DEGREES 05 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 100.61 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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## HOTEL PARCEL 4

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 31.97 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT WITH THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 88 DEGREES 56 MINUTES 15 SECONDS WEST, 1.51 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 48.26 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 48.27 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 5

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 31.97 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 48.40 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 56.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 48.27 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, ALONG SAID SOUTH LINE, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 6

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE

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CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 48.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 43.61 FEET TO THE NORTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 22.93 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 4.83 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 25.48 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 9.52 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 54.15 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 7

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE NORTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 34.20 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 7.94 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 15.46 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 13.70 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 5.91 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 18.14 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 30.64 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 10.64 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 11.82 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 38.71 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, 63.19 FEET TO THE SOUTHWESTERLY

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LINE OF SAID TRACT; THENCE NORTH 55 DEGREES 05 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 100.61 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 8

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE NORTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 18 SECONDS EAST, 34.58 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 42 SECONDS EAST, 7.30 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 18 SECONDS EAST, 10.11 FEET; THENCE SOUTH 52 DEGREES 06 MINUTES 27 SECONDS EAST, 33.13 FEET; THENCE SOUTH 37 DEGREES 53 MINUTES 33 SECONDS WEST, 5.05 FEET; THENCE NORTH 52 DEGREES 06 MINUTES 27 SECONDS WEST, 0.99 FEET; THENCE SOUTH 37 DEGREES 53 MINUTES 33 SECONDS WEST, 25.59 FEET; THENCE NORTH 52 DEGREES 06 MINUTES 27 SECONDS WEST, 9.48 FEET; THENCE SOUTH 37 DEGREES 53 MINUTES 33 SECONDS WEST, 12.72 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 37.91 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, 63.19 FEET TO THE SOUTHWESTERLY LINE OF SAID TRACT; THENCE NORTH 55 DEGREES 05 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 100.61 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL 9

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE SOUTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 180.94 FEET TO THE NORTHEASTERLY LINE THEREOF; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 23.34 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 4.83 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 15.58 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 102.42 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT, BEING ALSO NORTHWESTERLY LINE OF MAC CHESNEY COURT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHEASTERLY LINE, 98.72 FEET TO THE SOUTHWESTERLY LINE OF SAID TRACT; THENCE NORTH 55 DEGREES 05 MINUTES 15 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, 100.61 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

## HOTEL PARCEL 10

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 92.01 FEET TO THE NORTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE, THE FOLLOWING COURSES AND DISTANCES, THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 22.93 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 4.83 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 25.48 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 9.50 FEET TO THE WEST LINE OF SAID TRACT, THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 102.42 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, ALONG SAID SOUTH LINE, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as 360 North Michigan Avenue and 77-85 East Wacker Drive, Chicago, Illinois

Permanent Index Numbers: 17-10-300-001-0000; 17-10-300-002-0000; 17-10-300-003-0000, 17-10-300-004-0000

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## EXHIBIT 1.1(B)

### LEGAL DESCRIPTION OF RETAIL PARCEL

#### RETAIL PARCEL 1

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE NORTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 54 DEGREES 39 MINUTES 59 SECONDS EAST 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 34.20 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST 7.94 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST 7.95 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST 40.60 FEET TO THE NORTHWESTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 43.60 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### RETAIL PARCEL 2

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 18.47 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE SOUTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE

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NORTHWESTERLY LINE OF SAID TRACT, 115.84 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 32.26 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 16.05 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 6.66 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 53.88 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 15.58 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 4.83 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST 23.34 FEET TO THE NORTHWESTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 65.10 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 3

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE SOUTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 34.20 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 7.94 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 15.46 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 13.70 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 5.91 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 18.14 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 30.64 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 10.64 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 11.82 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 38.71 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG SAID SOUTHEASTERLY LINE, 35.53 FEET; THENCE NORTH 88 DEGREES 56 MINUTES 15 SECONDS WEST, 1.51 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 48.26 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE EAST LINE OF SAID

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TRACT; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 10.34 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 1.08 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 7.57 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 9.37 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE EAST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 31.76 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 15.58 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 4.83 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 23.34 FEET THE NORTHWESTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 117.00 FEET; TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 4

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 31.97 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT WITH THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 88 DEGREES 56 MINUTES 15 SECONDS WEST, 1.51 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 48.26 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 48.27 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 5

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 31.97 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 48.40 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 56.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 48.27 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, ALONG SAID SOUTH LINE, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 6

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 48.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 43.61 FEET TO THE NORTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 22.93 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 4.83 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 25.48 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 9.50 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 51.76 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 3.45 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 6.37 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 10.28 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 2.36 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 10.35 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 7

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A

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TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT WITH THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 58.62 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 1.08 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 7.57 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 9.37 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 1.51 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 12.04 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 8

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 34.55 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE SOUTHWEST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, THE WEST LINE OF SAID TRACT, 58.62 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID WEST LINE, 12.04 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 3.45 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 6.37 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 10.28 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 2.36 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 9

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE

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HAVING AN ELEVATION OF 48.06 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING ALSO THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST WACKER DRIVE WITH THE SOUTHWESTERLY LINE OF THE NORTHEASTERLY HALF OF SAID LOT 4; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID TRACT, 63.94 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 32.69 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 34.20 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 7.94 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 9.55 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 31.84 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 20.64 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 10.64 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 11.82 FEET; THENCE SOUTH 54 DEGREES 39 MINUTES 39 SECONDS EAST, 38.71 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, ALONG SAID SOUTHEASTERLY LINE, 35.53 FEET TO THE EAST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 58.62 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 1.08 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 4.61 FEET; THENCE NORTH 37 DEGREES 52 MINUTES 15 SECONDS EAST, 7.94 FEET TO THE EAST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 34.69 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 15.58 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 4.83 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 23.34 FEET THE NORTHWESTERLY LINE OF SAID TRACT; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, ALONG SAID NORTHWESTERLY LINE, 117.00 FEET; TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## **RETAIL PARCEL 10**

THAT PART OF LOTS 1, 2, 5, 6 AND 9 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT, BEING ALSO THE SOUTHEAST CORNER OF LOT 9 AFORESAID; THENCE NORTH 00 DEGREES 55

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MINUTES 45 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, 92.01 FEET TO THE NORTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID NORTHERLY LINE, THE FOLLOWING COURSES AND DISTANCES; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 22.93 FEET; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, 4.83 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 25.48 FEET; THENCE NORTH 52 DEGREES 07 MINUTES 45 SECONDS WEST, 9.50 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 31.76 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 15 SECONDS EAST, 3.45 FEET; THENCE SOUTH 52 DEGREES 07 MINUTES 45 SECONDS EAST, 6.37 FEET; THENCE SOUTH 37 DEGREES 52 MINUTES 15 SECONDS WEST, 10.28 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 15 SECONDS WEST, 2.36 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID WEST LINE, 58.62 FEET TO THE SOUTH LINE OF SAID TRACT THENCE SOUTH 88 DEGREES 56 MINUTES 15 SECONDS EAST, ALONG SAID SOUTH LINE, 56.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. CONTAINING 5,253 SQUARE FEET, 0.121 ACRES

## **RETAIL PARCEL 11**

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 56.50 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT WITH THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST LINE, 60.41 FEET; THENCE NORTH 52 DEGREES 06 MINUTES 27 SECONDS WEST, 7.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 52 DEGREES 06 MINUTES 27 SECONDS WEST, 5.30 FEET; THENCE NORTH 37 DEGREES 53 MINUTES 33 SECONDS EAST, 9.35 FEET; THENCE SOUTH 52 DEGREES 06 MINUTES 27 SECONDS EAST, 5.30 FEET; THENCE SOUTH 37 DEGREES 53 MINUTES 33 SECONDS WEST, 9.35 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## **RETAIL PARCEL 12**

THAT PART OF LOTS 1 THRU 4, INCLUSIVE, IN LOOMIS AND OTHERS RESUBDIVISION OF LOTS 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 IN BLOCK 4 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A

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TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 65.50 FEET ABOVE CHICAGO CITY DATUM, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 48.06 ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT WITH THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 00 DEGREES 55 MINUTES 45 SECONDS EAST, ALONG SAID EAST, 60.41 FEET TO THE POINT OF BEGINNING; THENCE NORTH 52 DEGREES 06 MINUTES 27 SECONDS WEST, 7.61 FEET; THENCE NORTH 37 DEGREES 53 MINUTES 33 SECONDS EAST, 9.35 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 59 SECONDS EAST, 0.46 FEET TO THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 55 MINUTES 45 SECONDS WEST, ALONG SAID EAST LINE, 12.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. CONTAINING 38.36 SQUARE FEET, 0.0009 ACRES

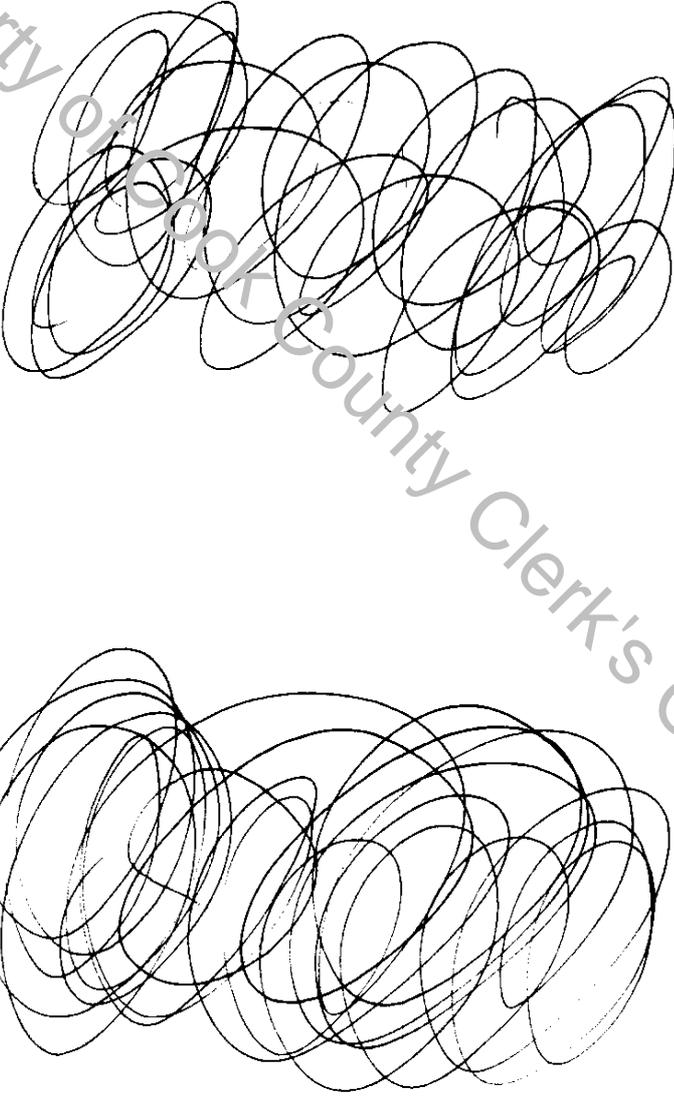
Commonly known as 360 North Michigan Avenue, Chicago, Illinois

Permanent Index Numbers: 17-10-300-001-0000; 17-10-300-002-0000

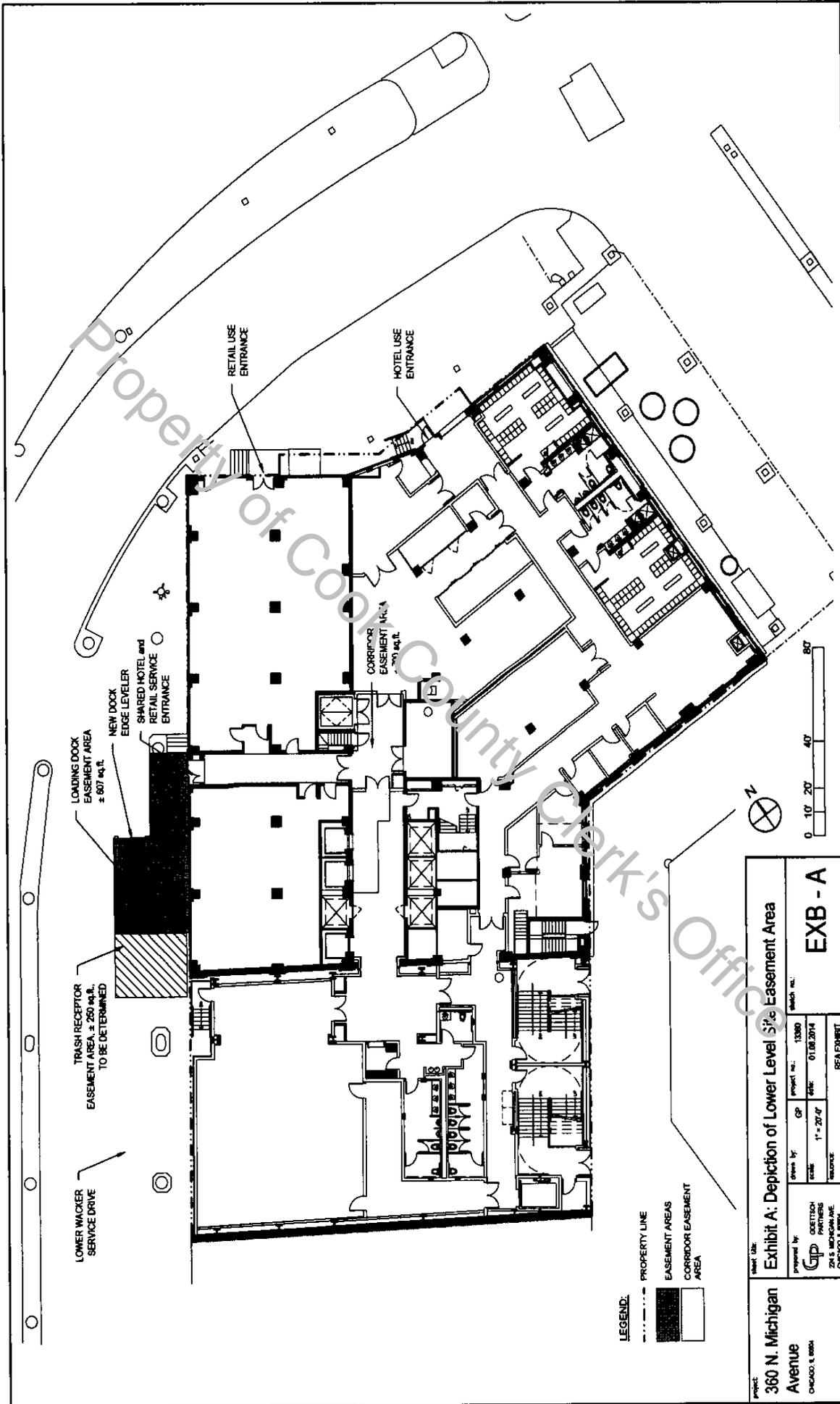
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**EXHIBIT 1.1(C)**  
**EASEMENT EXHIBIT**  
**(ATTACHED)**

Property of Cook County Clerk's Office



# UNOFFICIAL COPY



Project: 360 N. Michigan Avenue CHICAGO, IL 60611

Sheet: EXB - A

Project No.: 13380  
 Date: 01.08.2014  
 Scale: 1" = 20'-0"

Prepared by: GCP  
 Checked by: GCP  
 Drawn by: GCP

Client: GCP  
 24 S. MICHIGAN AVE.  
 CHICAGO, IL 60604

REVISIONS

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**IN WITNESS WHEREOF**, the undersigned has caused this Consent to be signed by its duly authorized officer this 29 day of May, 2015.

**STARWOOD PROPERTY MORTGAGE, L.L.C.**,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

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Connecticut  
 STATE OF NEW YORK )  
 Fairfield ) ss.: Greenwich  
 COUNTY OF NEW YORK )

On this 21<sup>st</sup> day of May, before me, the undersigned, a notary public in and for said state, personally appeared Andrew J. Sosa personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individuals acted, executed the instrument

[Signature]  
Notary Public

My Commission Expires:

**VERNICE BRIGGS**  
**NOTARY PUBLIC**  
 State of Connecticut  
 My Commission Expires  
 October 31, 2013

# UNOFFICIAL COPY

## CONSENT OF MORTGAGEE

THE UNDERSIGNED, Bank of America, N.A., a national banking association, as administrative agent for certain lenders, and the holder of that certain Mortgage dated May 29, 2014, and recorded with the Cook County Recorder on May 30, 2014 as Document No. 1415029042 (the "Mortgage") and other instruments securing that certain loan in the maximum principal amount of \$84,000,000 (the "Loan"), hereby consents to the execution and recording of the attached Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration"), and agrees that the lien of the Mortgage and other documents securing the Loan are subject and subordinate hereto. The address of the undersigned is:

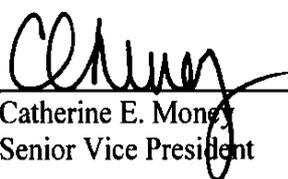
Bank of America, N.A.  
One Bryant Park, 5<sup>th</sup> floor  
New York, New York 10036  
Attention: Catherine E. Money

With a copy at the same time to:

Riemer & Braunstein LLP  
7 Times Square, Suite 2506  
New York, NY 10036  
Attention: Stephen G. Schweiger, Esq.

This Consent is intended to, and shall be deemed to constitute a notice from the undersigned to the Owners for purposes of Section 20.11(1) hereinabove in the Declaration entitling the undersigned to receive copies of all notices from each Owner to any Owner.

IN WITNESS WHEREOF, Bank of America, N.A. has caused this Consent to be signed by its duly authorized officer this 22<sup>nd</sup> day of MAY, 2015.

By:   
Name: Catherine E. Money  
Title: Senior Vice President

# UNOFFICIAL COPY

STATE OF NEW YORK    )  
  ) SS  
COUNTY OF NEW YORK )

I, Patricia M. Whalen a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Catherine E. Money, the Senior Vice President of Bank of America, N.A., a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as such officer of said company as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of MAY, 2015.

Patricia M. Whalen  
Notary Public

My commission expires \_\_\_\_\_

**PATRICIA M. WHALEN**  
**Notary Public - State of New York**  
**No. 01WH4897976**  
**Qualified in Richmond County**  
**My Commission Expires Nov. 09, 2015** 2017

Clerk's Office