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DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING COVENANTS

by

ELM STATE PROPERTY LLC

Dated: March 9, 2016

*Re record to correct order of
Declaration recording*

**PERMANENT REAL ESTATE INDEX
NUMBERS:**

17-03-200-002 and 17-03-200-003

ADDRESS OF PROPERTY:

4 East Elm St., Chicago, Illinois 60611

RECORDING FEE 278⁰⁰

DATE 3/14/16 COPIES 6x

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LIST OF EXHIBITS



Exhibit

- | | |
|-----------------|------------------------|
| A | Retail Parcel |
| B | Residential Parcel |
| C | Plans |
| 6.1(a) - 6.1(i) | Services |
| 6.5 | Billing and Payment |
| 16.1 | Depository Declaration |

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DECLARATION

OF

RECIPROCAL EASEMENTS AND OPERATING COVENANTS

THIS DECLARATION OF RECIPROCAL EASEMENTS AND OPERATING COVENANTS ("**Declaration**") is made and entered into as of the 9th day of March, 2016 (the "**Effective Date**"), by **ELM STATE PROPERTY LLC**, a Delaware limited liability company ("**Declarant**").

RECITALS:

- A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the Preamble of this Declaration, have the meanings set forth in Article 1 of this Declaration.
- B. Declarant is the Owner of certain real property together with the improvements located or to be located thereon, which Property consists of the Retail Parcel, more particularly described on EXHIBIT A attached hereto and by this reference made a part hereof.
- C. Declarant is the Owner of certain real property together with the improvements located or to be located thereon, which Property consists of the Residential Parcel, more particularly described on EXHIBIT B attached hereto and by this reference made a part hereof.
- D. At some time subsequent to the recording of this Declaration, either the Retail Owner or the Residential Owner may submit its Property or portions thereof, to the Act.
- E. As the Retail Property and the Residential Property are not functionally independent of the other and each will depend 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 Residential Property, the Owners intend to provide for the efficient operation of each respective portion, estate and interest in the Building as and to the extent provided in this Declaration.

NOW, THEREFORE, in consideration of the Recitals and the covenants contained herein, as of the Effective Date, Declarant hereby declares that the Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted, subject to this Declaration and each of the following easements, covenants, conditions, restrictions, uses, privileges and charges created hereunder.

ARTICLE 1

DEFINITIONS

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

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- (a) “**2016 Equivalent Dollars**” has the meaning set forth in Section 11.2.
- (b) “**Act**” means The Condominium Property Act of the State of Illinois and any amendments enacted from time to time.
- (c) “**Allocated Share**” means:
- (i) as to Retail Owner, the Retail Owner Allocated Share, and
 - (ii) as to Residential Owner, the Residential Owner Allocated Share.
- (d) “**Alterations**” has the meaning set forth in Section 14.1(a).
- (e) “**Altering Owner**” has the meaning set forth in Section 14.1(a).
- (f) “**Arbitrable Dispute**” means any dispute arising under this Declaration which is expressly made subject to arbitration under the provisions of Article 11 hereof or designated herein as an Arbitrable Dispute.
- (g) “**Architect**” has the meaning set forth in Section 18.1.
- (h) “**Award**” has the meaning set forth in Section 13.1.
- (i) “**Benefited Owner**” has the meaning set forth in EXHIBIT 6.5.
- (j) “**Building**” means all improvements situated within and upon the Retail Parcel and the Residential Parcel. The term “**Building**” shall also mean either the Retail Building or the Residential Building, as the context requires.
- (k) “**Business Day**” means a day of the year in which banks are open for business in the State of Illinois.
- (l) “**City**” means the City of Chicago, Illinois, a municipal corporation.
- (m) “**Claim**” has the meaning set forth in Section 7.1.
- (n) “**Com-Ed Room**” means those certain rooms and vaults located within the Building.
- (o) “**Common Walls, Floors and Ceilings**” means all common structural and partition walls, floors, and ceilings situated on or adjoining the Retail Building and the Residential Building, or located on one Building but forming the walls, floors or ceilings of the other Building.
- (p) “**Communications Equipment**” means telecommunications, broadband, satellite, microwave, internet, television, and radio related equipment.

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- (q) “**Condominium Association**” means the condominium association created pursuant to the terms of any Condominium Declaration applicable to any portion of a Property submitted to the Act.
- (r) “**Condominium Declaration**” means the declaration of condominium executed by an Owner with respect to any portion of such Owner’s Property which has been submitted to the Act, as such Condominium Declaration may be amended from time to time, including, without limitation, for the purposes of adding Property to its terms.
- (s) “**Constructing Owner**” has the meaning set forth in Section 4.1(a).
- (t) “**Consumer Price Index**” shall have the meaning set forth in Section 11.2.
- (u) “**Contributing Party**” has the meaning set forth in EXHIBIT 6.5.
- (v) “**Cooling Equipment**” means the chillers and all other Facilities serving such equipment located on the 24th floor of the Building.
- (w) “**Creditor Owner**” means an Owner:
- (i) whom payment of money or any other duty or obligation is owed under this Declaration by another Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Declaration; or
 - (ii) who has exercised any self-help remedy provided for in this Declaration.
- (x) “**Default Amount**” has the meaning set forth in Section 10.1.
- (y) “**Defaulting Owner**” means an Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to another Owner.
- (z) “**Depository**” means the Person from time to time acting pursuant to Article 16.
- (aa) “**Easement Facilities**” means a collective reference to Retail Easement Facilities and the Residential Easement Facilities.
- (bb) “**Easements**” means all easements granted, reserved, declared or created pursuant to the terms and provisions of this Declaration.
- (cc) “**Effective Date**” has the meaning set forth in the Preamble of this Declaration.
- (dd) “**Emergency Generator**” means the emergency generator located in the Loading Dock.
- (ee) “**Emergency Situation**” means a situation:

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- (i) impairing or imminently likely to impair structural integrity, support, or waterproof nature of a Building;
- (ii) causing or imminently likely to cause bodily injury to Persons or substantial physical damage to a Building or any property in, on, under, within, upon or at a Building;
- (iii) causing or imminently likely to cause substantial economic loss to an Owner (including the issuance of a building, health, fire or other Law compliance violation);
- (iv) substantially disrupting or imminently likely to substantially disrupt business operations in a Building for its intended purposes; or
- (v) causing or imminently likely to render any portion of a Building uninhabitable.

The duration of an Emergency Situation shall be deemed to commence at the inception of the Emergency Situation and shall include the time reasonably necessary to remedy the Emergency Situation and shall end upon completion of such remedy.

- (ff) "**Essential Service**" has the meaning set forth in Section 6.6(b).
- (gg) "**Estoppel Certificate**" has the meaning set forth in Article 15.
- (hh) "**Existing Zoning**" means the applicable zoning ordinance of the City, as of the Effective Date, subject to any legal non-conforming use or structure permitted under any amendments or changes to such ordinance from and after the Effective Date.
- (ii) "**Façade**" means the exterior walls of the Building (and any replacements or improvements thereto) on the northern, southern, eastern and western sides, from the ground level up to the roofs, consisting of the combination of windows, window frames, the window wall system, joints and seals, exposed concrete/precast and glass storefront and the cornice at the top of the Building covering or attached to the concrete or steel Structural Supports forming the curtain wall of the Building, but excluding:
 - (i) the roofs and the roof structures, membrane, flashings and seals over the cornice;
 - (ii) the access doors and doorways serving each Property as well as the loading dock entrance door and systems and joints and seals (if any);
 - (iii) the Structural Supports for the exterior wall of the Building to which the Façade is attached;

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- (iv) the windows and window frames for the Retail Building; and
 - (v) the Window Box.
- (j) “**Facilities**” means any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers (including, without limitation, any chillers serving the Building), closets (for facilities and risers) coils, computers, conduits, controls, control centers, condensers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), gas mains, gas meters, fans, fixtures, generators (including, without limitation, emergency generator(s)), hangers, heat traces, hot water heating systems (including hot water supply and return risers), indicators, junctions, lines, light fixtures, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, sprinklers, starters, switches, switchboards, systems, tanks, telecommunication equipment, transformers, vacuum pipe valves, water mains, water meters, wiring, and the like, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, data transmission, electric elevator, exhausts, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, cable television, internet service, microwave signals, satellite transmissions, television, transportation, ventilation and water service, including, without limitation, the Com-Ed Room and providing the origination of electrical service to the Retail Building and the Residential Building, the Emergency Generator, the Fire Pumps, the Sanitary Sewer Main, and any replacements of or additions to any of the items described in this paragraph.
- (kk) “**Fire Alarm Panels**” means the fire control panels for the Building.
- (ll) “**Fire Contractor**” has the meaning set forth in **Exhibit 5.1(b)**.
- (mm) “**Fire Pumps**” means the fire pumps and combination standpipe system located in the Pump Room, which fire pumps are providing service for the Sprinkler System in all or portions of the Retail Building and the Residential Building.
- (nn) “**Fire Suppression System**” means the Fire Pumps, the Fire Alarm Panels, the Sprinkler System and all smoke detectors, annunciators, stand pipes, fire strobe lights, fire alarms, fire alarm lights, automatic door closers, exit lights, fire hoses, safety gates, heat detectors, fire doors and all other Facilities, systems and equipment providing fire suppression and life safety within the Building.
- (oo) “**Hazardous Materials**” means:
- (i) 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.*);
 - (ii) asbestos and asbestos-containing materials;

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- (iii) oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel;
 - (iv) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136 *et seq.*);
 - (v) PCBs and other substances regulated under Toxic Substances Control Act, as amended (15 U.S.C. §2601 *et seq.*);
 - (vi) 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;
 - (vii) chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, 29 C.F.R. §1910.1200 *et seq.*;
 - (viii) 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
 - (ix) other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean-up.
- (pp) “**Impacted Owner**” has the meaning set forth in Section 7.2.
 - (qq) “**Indemnifying Owner**” has the meaning set forth in Section 7.1.
 - (rr) “**Indemnitee**” has the meaning set forth in Section 7.1.
 - (ss) “**Inspecting Owner**” has the meaning set forth in Section 7.7.
 - (tt) “**Law**” or “**Laws**” means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time maybe applicable to the Property, or any parts thereof.
 - (uu) “**Liening Owner**” has the meaning set forth in Section 7.2.
 - (vv) “**Loading Dock**” means that area as depicted on the Plans.
 - (ww) “**Main Electrical Room**” means the electrical room located in the basement of the Building.
 - (xx) “**Maintenance**” and “**Maintain**” means the operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration, reconstruction and replacement when necessary

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or desirable of all or any portion of the Building, the Facilities, or other equipment and includes the right of access to and the right to remove from the Building portions of such Facilities or other equipment for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

- (yy) “**Mezzanine Lender**” has the meaning set forth in Section 20.10(f).
- (zz) “**Mechanics Lien Act**” has the meaning set forth in Section 4.2.
- (aaa) “**Mortgage**” has the meaning set forth in Section 20.10(a).
- (bbb) “**Mortgagee**” has the meaning set forth in Section 20.10(a).
- (ccc) “**Net Capitalized Cost of Replacement**” has the meaning set forth in **EXHIBIT 6.5**.
- (ddd) “**Net Salvage Value of the Capital Item Being Replaced**” has the meaning set forth in **EXHIBIT 6.5**.
- (eee) “**Non-Constructing Owner**” has the meaning set forth in Section 4.1(a).
- (fff) “**Non-Performing Delay Owner**” has the meaning set forth in Section 12.2.
- (ggg) “**Non-Performing Owner**” has the meaning set forth in Section 6.2.
- (hhh) “**Non-Performing Owner Services**” has the meaning set forth in Section 6.2.
- (iii) “**Notice**” has the meaning set forth in Section 10.1.
- (jjj) “**Objecting Party**” has the meaning set forth in Section 14.1(l).
- (kkk) “**Occupant**” means any Person from time to time entitled to the use and occupancy of any portion of a Building as an Owner, a Unit Owner (in the case of any portion of the either Property which is submitted to the condominium form of ownership pursuant to the Act) or under any lease, sublease, license, concession or other similar agreement or as a guest or invitee.
- (lll) “**Operating Expenses**” has the meaning set forth in **EXHIBIT 6.5**.
- (mmm) “**Operating Owner**” has the meaning set forth in **EXHIBIT 6.5**.
- (nnn) “**Owned Facilities**” means a collective reference to the Retail Owned Facilities and Residential Owned Facilities.
- (ooo) “**Owner**” or “**Owners**” means Retail Owner and Residential Owner, or either of them.
- (ppp) “**Parcel(s)**” means the Retail Parcel or the Residential Parcel or both of them.

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- (qqq) “**Performing Party**” has the meaning set forth in **EXHIBIT 6.5**.
- (rrr) “**Permittees**” means all Occupants and the officers, directors, members, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants and concessionaires of Occupants insofar as their activities relate to the intended use and occupancy of a Building.
- (sss) “**Person**” means any individual, partnership, firm, association, corporation, limited liability company, trust, land trust or any other form of business or not-for-profit organization or governmental entity.
- (ttt) “**Plans**” means the site plans and floor plans attached hereto as **EXHIBIT C**.
- (uuu) “**Prior Lien**” has the meaning set forth in **Section 10.1**.
- (vvv) “**Progress Payments**” has the meaning set forth in **EXHIBIT 6.5**.
- (www) “**Projection Notice**” has the meaning set forth in **EXHIBIT 6.5**.
- (xxx) “**Projections**” has the meaning set forth in **EXHIBIT 6.5**.
- (yyy) “**Property**” means, collectively, the Retail Property and the Residential Property. The term “**Property**” shall also mean either the Retail Property or the Residential Property, as the context requires.
- (zzz) “**Pump Room**” means the room located in the basement of the Building.
- (aaaa) “**Recorder**” means the Recorder of Deeds of Cook County, Illinois.
- (bbbb) “**Removal Deadline**” has the meaning set forth in **Section 7.2**.
- (cccc) “**Replacement Facilities**” has the meaning set forth in **EXHIBIT 6.5**.
- (dddd) “**Replacing Party**” has the meaning set forth in **EXHIBIT 6.5**.
- (eeee) “**Requesting Owner**” has the meaning set forth in **Section 15.1**.
- (ffff) “**Residential Building**” means that portion of the Building located within the Residential Parcel.
- (gggg) “**Residential Easement Facilities**” means the Facilities not owned by Residential Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located and/or relocated) in the Retail Property:
- (i) solely benefiting the Residential Building, or
 - (ii) necessary for Residential Owner to perform its obligations under **Article 6** of this Declaration,

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but in either case excluding: (1) Facilities, the Maintenance for which Retail Owner is expressly responsible under Article 6 hereof, and (2) the Residential Owned Facilities.

- (hhhh) **“Residential Owned Facilities”** means Facilities owned by Residential Owner and located in, upon or within the Residential Parcel or Residential Building.
- (iiii) **“Residential Owner”** means the Person or Persons (excluding Occupants and any Mortgagees prior to such Mortgagee taking title to the Property subject to its Mortgage, but including a Condominium Association) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Residential Property. Notwithstanding anything to the contrary contained herein, to the fullest extent permitted by law, until the date upon which the Declarant turns over control of the Condominium Association to the Unit Owners as required by the Act, the Declarant shall have the sole discretion to act on behalf of the Residential Owner and all of its constituent Residential Unit Owners.
- (jjjj) **“Residential Owner Allocated Share”** (i) with respect to all services to be provided by the Owners pursuant to Article 6 of this Declaration, the Residential Owner Allocated Share means the percentages shown on EXHIBITS 6.1(A) through and including 6.1(I), and (ii) if no percentage is otherwise set forth in this Declaration with respect to a particular expense, the Residential Owner Allocated Share means the percentage shown on EXHIBIT 6.1(I).
- (kkkk) **“Residential Parcel”** means the real Property legally described on EXHIBIT B, located in the City.
- (llll) **“Residential Property”** means the Residential Parcel improved with the Residential Building and all other improvements thereto and the Residential Owned Facilities.
- (mmmm) **“Retail Building”** means that portion of the Building located within the Retail Parcel.
- (nnnn) **“Retail Easement Facilities”** means the Facilities not owned by Retail Owner and now located (or which may pursuant to this Declaration or other agreements of the Owners hereafter be located and/or relocated) in the Residential Property and:
- (i) solely benefiting the Retail Building, or
 - (ii) necessary for Retail Owner to perform its obligations under Article 6 of this Declaration,

including the “black iron” duct route and all related ductwork which may be installed as designated on the Plans, but in either case excluding: (1) Facilities, the Maintenance for which Residential Owner is expressly responsible under Article 6 hereof, and (2) the Retail Owned Facilities.

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- (oooo) “**Retail Owned Facilities**” means the Facilities owned by Retail Owner and located in, upon or within the Retail Parcel or Retail Building, or if so designated on the Plans, the Residential Parcel or the Residential Building.
- (pppp) “**Retail Owner**” means the Person or Persons (excluding Occupants and any Mortgagees prior to such Mortgagee taking title to the Property subject to its Mortgage, but including a Condominium Association) whose estates or interests, individually or collectively, constitute the fee simple ownership of the Retail Property.
- (qqqq) “**Retail Owner Allocated Share**” with respect to all services to be provided by the Owners pursuant to **Article 6** of this Declaration, the Retail Owner Allocated Share means the percentages shown on **EXHIBITS 6.1(A)** through and including **6.1(J)**, and (ii) if no percentage is otherwise set forth in this Declaration with respect to a particular expense, the Retail Owner Allocated Share means the percentage shown on **EXHIBIT 6.1(J)**.
- (rrrr) “**Retail Parcel**” means the real property legally described on **EXHIBIT A**, located in the City.
- (ssss) “**Retail Property**” means the Retail Parcel improved with the Retail Building and all other improvements thereto, and the Retail Owned Facilities.
- (tttt) “**Review**” has the meaning set forth in **Section 7.7**.
- (uuuu) “**Roof Contractor**” has the meaning set forth in **EXHIBIT 6.1(H)**.
- (vvvv) “**Sanitary Sewer Main**” means the sanitary sewer main located in the basement of the Building.
- (wwww) “**Sanitary Sewer System**” means the Sanitary Sewer Main and other Facilities that handle sanitary sewer drainage and discharge from the Property.
- (xxxx) “**Shared Facilities**” means the portion of any Facilities that serve, at the same time, any portion of both the Retail Property and the Residential Property, including, but not limited to, the following:
- (i) the Shared Mechanical Rooms,
 - (ii) the Shared Mechanical Chases,
 - (iii) the Shared Sanitary and Storm Sewer Systems, and
 - (iv) the Fire Suppression System.
- (yyyy) “**Shared Mechanical Rooms**” means
- (i) the Com-Ed Room,

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- (ii) the Loading Dock,
 - (iii) the Pump Room,
 - (iv) the Main Electrical Room,
 - (v) the Teledata Room,
 - (vi) the Gas Meter Room, and
 - (vii) such other rooms and vaults which contain Facilities serving both the Retail Property and the Residential Property either as Shared Facilities or independent Facilities.
- (zzzz) “**Shared Mechanical Chases**” means the shafts, conduits, risers and columns located within the Retail Building and the Residential Building, which Shared Mechanical Chases contain Facilities serving Retail Owner and Residential Owner, but specifically excluding any Facilities located within the Shared Mechanical Chases.
- (aaaaa) “**Shared Sanitary and Storm Sewer Systems**” has the meaning set forth in **EXHIBIT 6.1(A)**.
- (bbbbbb) “**Sprinkler System**” means the controllers, fire alarm systems, piping, sprinkler heads and other equipment related to and connected to the sprinkler system line located and servicing certain areas of the Retail Building and the Residential Building.
- (ccccc) “**Statement**” has the meaning set forth in **EXHIBIT c.5**
- (dddddd) “**Storm Sewer Main**” means the storm sewer main located on the lower level of the Building.
- (eeeeee) “**Storm Sewer System**” means the Storm Sewer Main, Storm Detention Tank, and other Facilities that handle storm water drainage and discharge from the Property.
- (ffffff) “**Structural Supports**” means 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 a Building.
- (gggggg) “**Unavoidable Delay**” has the meaning set forth in **Article 12**.
- (hhhhh) “**Unit**” means a residential, commercial, or parking unit, as applicable, created by any Condominium Declaration.
- (iiiiii) “**Unit Owner**” shall be the owner of a Unit.

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- (jjjj) **“Utility Company”** means any Person, including governmental bodies, furnishing water, chilled water, electricity, sewer, gas, steam, telephone or network television, cable television, satellite equipment and microwave signals, data transmission, or internet service or other services or materials generally known as utilities.
- (kkkkk) **“Window Box”** means the approximately four (4) story glass-windowed display enclosure in the Retail Building overlooking the corner of Elm Street and State Street, expressly excluding the roof of such display enclosure, and as otherwise designated on the Plans.
- (lllll) **“Work”** means the repair, maintenance, restoration, reconstruction or demolition of any Building or any improvements thereto.

1.2 Construing Various Words and Phrases.

- (a) The following words and phrases shall be construed as follows:
- (i) “at any time” shall be construed as “at any time or from time to time”;
 - (ii) “any” shall be construed as “any and all”;
 - (iii) “including” shall be construed as “including but not limited to”;
 - (iv) “will” and “shall” shall each be construed as mandatory;
 - (v) “may” shall be construed as “may but shall not be obligated to”; and
 - (vi) “granted” as hereinafter used in Article 2 and Article 3 describing Easements shall be deemed to mean “granted, reserved, declared and created”.
- (b) Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration and all references to Exhibits shall refer to the Exhibits attached to this Declaration.
- (c) 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.
- (d) 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.

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ARTICLE 2

EASEMENTS APPURTENANT TO RETAIL PROPERTY

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

- (a) Residential Owner has granted, reserved, declared and created certain Easements more particularly described in this Article 2. The Easements in this Article 2 shall bind and be enforceable against Residential Owner and its successors, grantees and assigns.
- (b) The Easements granted, reserved, declared and created by this Article 2 shall benefit Retail Owner and its Permittees.
- (c) The Easements granted, reserved, declared and created by this Article 2 shall bind and burden the Residential Property (the Residential Property shall, for the purposes of this Article 2, be deemed to be the servient tenement). Where only a portion of the Residential Property is so 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 Residential Owner's estate or interest in the Residential Property shall be made subject to the Easements and obligations of this Declaration, which shall run with the land.
- (d) The Easements granted by this Article 2 are appurtenant to and shall benefit the Retail Property, which shall, for the purposes of this Article 2 with respect to such Easements, be deemed to be the dominant tenement. Where only a portion of the Retail Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Retail Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant tenement.
- (e) Unless otherwise expressly provided in this Declaration, all Easements granted under this Article 2 are irrevocable and perpetual in nature, and are appurtenant Easements and not Easements in gross.
- (f) Residential Owner may:
 - (i) temporarily prevent, close off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements on the Residential Parcel, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on Retail Owner:
 - (A) in connection with the Maintenance of the Residential Property, the Residential Easement Facilities and Residential Owned Facilities pursuant to Section 9.1(b) or elsewhere in this Declaration; or

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- (B) in an Emergency Situation; or
 - (C) to prevent a dedication of or accruing of rights by the public in and to the use of any of the Residential Property.
- (ii) impose, taking into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Retail Owner's needs and requirements:
- (A) reasonable limitations on Retail Owner's or any of its Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Residential Property described in this **Article 2**, including restricting access to any Unit used for residential purposes, establishing paths of ingress and egress, and restricting hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and
 - (B) reasonable security controls consistent with the use of the Residential Property and any overall security system for such Property.
- (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 **Article 2** shall in all events be subject to the concurrent use by the Residential Owner as and only to the extent reasonably necessary for the Maintenance of the Residential Property, for exercise of rights of self-help granted under **Section 6.5** 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. Any non-exclusive Easement granted under this **Article 2** shall in all events be subject to the concurrent use by the Residential Owner for all uses contemplated under this Declaration which do not interfere with or materially adversely affect the right of the Retail Owner.
- (i) With respect to the Maintenance of the Retail Building, Shared Facilities, Retail Owned Facilities or Retail Easement Facilities located in the Residential Building, Maintenance expressly includes the right of entry in accordance with this **Article 2** with notice (except in an Emergency Situation) by Retail Owner and its contractors, agents and employees, into any areas thereof and the right to perform Maintenance as and when needed (including, without limitation, the right to temporarily remove wall, floor and ceiling sections to provide access to areas requiring Maintenance), using reasonable efforts to minimize damage caused by such Maintenance and to repair any such damage; provided, however that (i) where possible, Retail Owner shall exercise its right of entry during those hours of the day when such exercise will cause the least possible disturbance to the Occupants of the Residential Building, and (ii) the responsibility to repair any

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damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to substantially the same condition existing immediately prior to such damage.

2.2 Grant of Easements. The following Easements in, to, under, over, upon and through portions of the Residential Property in favor of the Retail Property are hereby granted:

- (a) Ingress and Egress and Use. Residential Owner hereby grants to Retail Owner a non-exclusive Easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Residential Property, but only to the extent reasonably necessary for the use, operation, Alterations, and Maintenance (but only if and when such Alterations and/or Maintenance is required or permitted under this Declaration) of:
- (i) the Retail Building;
 - (ii) any Facilities located in the Residential Property which provide or are necessary to provide the Retail Building with any utilities or other services necessary to the operation of the Retail Building, including, without limitation, the Retail Easement Facilities, and the Retail Owned Facilities;
 - (iii) any other areas in the Residential Property as to which an Easement for use or Maintenance has been granted to Retail Owner, or the option to perform a service is available to Retail Owner under Section 6.6; and
 - (iv) to permit the exercise of the rights of self-help granted to Retail Owner pursuant to this Declaration or otherwise during any period in which said rights may be exercised.
- (b) Retail Property Structural Support. In addition to the rights and obligations of the parties set forth in Article 5, Residential Owner hereby grants to Retail Owner a non-exclusive Easement in all Structural Supports located in or constituting a part of the Residential Property for the support of:
- (i) the Retail Building,
 - (ii) any Facilities or areas located in the Residential Property with respect to which Retail Owner is granted an Easement, and
 - (iii) any Retail Owned Facilities.
- (c) Use of Facilities Benefiting Retail Building. Residential Owner hereby grants to Retail Owner a non-exclusive Easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Retail Easement Facilities, for which an Easement is granted under Section 2.2(d) below) which are:

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- (i) located in the Residential Property, including Retail Owned Facilities and Shared Facilities; and
 - (ii) connected to Facilities located in the Retail Building which provide or are necessary to provide the Retail Building with any utilities or other services necessary to the operation of the Retail Building.
- (d) Retail Easement Facilities. Residential Owner hereby grants to Retail Owner a non-exclusive Easement permitting the existence, attachment and Maintenance of the Retail Easement Facilities.
- (e) Common Walls, Ceilings and Floors. Residential Owner hereby grants to Retail Owner a non-exclusive Easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Retail Parcel and the Residential Parcel.
- (f) Utilities.
- (i) Residential Owner hereby grants 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 Property, in those areas of the Residential Property where such utilities are currently located or may hereafter be located.
 - (ii) If, at any time, it shall become necessary to relocate or add to utility Easements (including installation of Facilities) other than where currently located or to be located as part of the Residential Property in order to provide or upgrade utility service to the Retail Property, Residential Owner agrees to grant such additional or relocated utility Easements (at such location agreed to by the Retail Owner and the Residential Owner in the exercise of their reasonable judgment, but not within any space occupied by any Occupant of any portion of the Residential Property) provided:
 - (A) such Easements do not unreasonably interfere with the reasonable use and enjoyment of the Residential Property for the purposes for which the Residential Property is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available,
 - (B) the Residential Owner shall not be required to grant an Easement which would convert otherwise available space for commercial or residential use, occupancy or storage unless such relocation or additional Easements are required by Law and no other space is reasonably available, and the Residential Owner is equitably compensated for the value of such converted space and

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- (C) the Retail Owner shall pay the Residential Owner's reasonable costs and expenses in connection with granting such Easement and restoring or repairing any property damaged by the installation of a Facility on the Easement.
- (g) Retail Building Encroachments.
- (i) Residential Owner hereby grants to Retail Owner an exclusive Easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in substantially the same location or result from the construction of the Building (or any of the improvements therein) or if, by reason of any settlement or shifting of the Building, any part of the Retail Building or Retail Owned Facilities not currently located within the Residential Parcel encroaches or shall hereafter encroach upon any of the Residential Parcel.
- (ii) This Easement shall exist only so long as the encroachment portion of the Retail Building or such Facilities continues to exist, or replacements are made in substantially the same location which do not enlarge the encroachment in any material respect. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately enlarged in any material respect.
- (h) Retail Owned Facilities. Residential Owner hereby grants to Retail Owner a non-exclusive Easement permitting the existence, attachment and Maintenance of Retail Owned Facilities that are located in the Residential Property.
- (i) Shared Facilities.
- (i) Residential Owner does hereby grant to Retail Owner a non-exclusive Easement with respect to Persons, material and equipment to permit the use, operation and Maintenance of the Shared Facilities by Retail Owner and its Permittees as is necessary or desirable for the use and operation of the Retail Building by Retail Owner (the foregoing shall include the right to maintain any ductwork, wiring, equipment or other connections as are necessary or appropriate to ensure the ongoing use and function of and to use and connect to the Shared Facilities by the Owners).
- (ii) In furtherance of the rights under this Section 2.2(i), Retail Owner shall have the right (but not be obligated) to enter the Residential Building at all reasonable times and, in the event Retail Owner needs to gain access to such portions of the Residential Building as contain any Occupant's living quarters, accompanied by a representative of Residential Owner for the purpose of (A) obtaining necessary access to the Shared Facilities and/or (B) facilitating the use or operation of the Shared Facilities; provided, however, that Retail Owner shall exercise commercially reasonable efforts

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to minimize interference with the use and operation of the Residential Building in the exercise of the foregoing rights of Retail Owner.

- (iii) The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Residential Owner (which consent shall not be unreasonably withheld, delayed or conditioned), to schedule and temporarily shut down the least number of Shared Facilities required under the circumstances (which shall be shut down in cooperation with Residential Owner as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down to the Residential Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Retail Owner is responsible pursuant to this Declaration.
- (j) Rooftop and Communications Equipment. Residential Owner hereby grants to Retail Owner (and any Utility Company, if required), a non-exclusive Easement in and through shafts, risers and conduit within the Residential Property and utilities serving the same and for the use and Maintenance of current and future Communications Equipment connecting areas in the Retail Property to any such Communications Equipment which is currently available or becomes available through technological advances. Said future Communications Equipment shall extend through space in a manner that is mutually acceptable to the Residential Owner and the Retail Owner, acting reasonably. The rights of the Retail Owner to install, use and Maintain the Communications Equipment also shall be subject to the following:
- (i) The size, appearance and screening of such Communications Equipment shall be comparable to rooftop telecommunications equipment located on comparable first-class buildings in the City.
 - (ii) Retail Owner shall be responsible for any repairs to the roof as a result of such installation, operation, Maintenance and removal and shall take appropriate measures to ensure that any and all roof warranties for the roof are not violated. The installation, operation and Maintenance of the Communications Equipment shall be performed in a manner so as not to adversely affect the structural safety or integrity of the roof, and shall be performed by qualified third-party professionals.
 - (iii) Retail Owner shall prevent the interference with the reception of telecommunications, broadband, satellite, microwave, internet, television, radio or other signals at the Building or interfere with the equipment then existing within the Building or on the roof of the Building. To the extent that Retail Owner's Communications Equipment causes any material interference with the signals or reception of any pre-existing telecommunications equipment or Facilities located within the Building or on the roof, Retail Owner and Residential Owner shall work in good faith to try to relocate or modify the installation of such installed

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Communications Equipment, adjust the frequency of such Communications Equipment and otherwise take commercially reasonable steps in a good faith effort to eliminate such interference. If after undertaking such good faith efforts the Owners are unable to eliminate such interference, Retail Owner shall remove or relocate such Communications Equipment (at Retail Owner's sole cost and expense) in order to eliminate any such interference.

- (iv) Retail Owner shall have the right to access the Communications Equipment to install, maintain, repair, replace, test, improve and remove the Communications Equipment.
- (v) Retail Owner shall be responsible, at its sole expense, for the installation, structural design, Maintenance, operation, repair, replacement, and removal of its Communications Equipment in accordance herewith, including, without limitation, the cost of all utilities and supplies. Any installation of Communications Equipment hereunder shall be deemed to be an Alteration in accordance with this Declaration.
- (vi) Retail Owner shall be responsible at its sole expense, for repairing any damage to the Communications Equipment and repairs to the Building (including the roof) caused by the installation, removal, repair, replacement, use, operation or Maintenance of the Communications Equipment.
- (vii) Any Communications Equipment that Retail Owner installs shall be for the exclusive use of Retail Owner and its Permittees in connection with its business operation or occupancy of space within the Building and shall not be for the use of any unrelated third party, such as a third party cellular phone company, or for any revenue generating opportunity.
- (viii) Retail Owner shall install, operate and maintain its Communications Equipment in accordance with all applicable Laws and maintain all required permits and licenses in accordance with applicable Law which are required for the operation of such equipment.
- (ix) Retail Owner shall protect, defend, indemnify and hold harmless Residential Owner from and against any and all claims for bodily injury or damage to property (including, without limitation, reasonable attorneys' fees and litigation expenses) imposed upon or incurred by or asserted arising out of the installation, Maintenance, use, operation, repair, replacement or removal of the Communications Equipment, including claims arising from health and life safety of any Permittees exposed to the Communications Equipment, and from and against all damages, costs, reasonable attorneys' fees including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim.

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ARTICLE 3

EASEMENTS APPURTENANT TO RESIDENTIAL PROPERTY

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

- (a) Retail Owner has granted, reserved, declared and created certain Easements more particularly described in this **Article 3**. The Easements in this **Article 3** shall bind and be enforceable against Retail Owner and its successors, grantees and assigns.
- (b) The Easements granted, reserved, declared and created by this **Article 3** shall benefit Residential Owner and its Permittees.
- (c) The Easements granted, reserved, declared and created by this **Article 3** shall bind and burden the Retail Property (the Retail Property shall, for the purposes of this **Article 3**, be deemed to be the servient tenement). Where only a portion of the Retail Property is so 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 Property shall be made subject to the Easements and obligations of this Declaration, which shall run with the land.
- (d) The Easements granted by this **Article 3** are appurtenant to and shall benefit the Residential Property, which shall, for the purposes of this **Article 3** with respect to such Easements, be deemed to be the dominant tenement. Where only a portion of the Residential Property is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Residential Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant tenement.
- (e) Unless otherwise expressly provided in this Declaration, all Easements granted under this **Article 3** are irrevocable and perpetual in nature, and are appurtenant Easements and not Easements in gross.
- (f) In exercising its rights created by an Easement granted under this **Article 3**, (i) the Residential Owner and its Permittees shall have the right to ingress and egress over, through and upon such portions of the Retail Property to the extent reasonably necessary to exercise the rights granted by such Easement, and (ii) the Residential Owner shall exercise commercially reasonable efforts to minimize the impact of its exercise on the Retail Owner, taking into consideration the impact of any disruption on the Retail Owner. To that end, where possible, Residential Owner shall exercise its Easement rights granted under this **Article 3** during those hours of the day when such exercise will cause the least possible disturbance to the Occupants of the Retail Building.
- (g) Retail Owner may:
 - (i) temporarily prevent, close off or restrict the flow of pedestrian ingress, egress or use in, over, across and through any of the Easements on the

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Retail Parcel, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on Residential Owner:

- (A) in connection with the Maintenance of the Retail Property, the Retail Easement Facilities and Retail Owned Facilities pursuant to Section 9.1(a) or elsewhere in this Declaration; or
 - (B) in an Emergency Situation; or
 - (C) to prevent a dedication of or accruing of rights by the public in and to the use of any of the Retail Property.
- (ii) impose, taking into consideration the reasonable needs and requirements of the users of any applicable Easement as well as Residential Owner's needs and requirements:
- (A) reasonable limitations on Residential Owner's or any of its Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Retail Property described in this Article 3, including establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement; and
 - (B) reasonable security controls consistent with the use of the Retail Property and any overall security system for such Property.
- (h) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this Article 3 shall constitute Arbitrable Disputes.
- (i) Any exclusive Easement granted under this Article 3 shall in all events be subject to the concurrent use by the Retail Owner as and only to the extent reasonably necessary for the Maintenance of the Retail Property, for exercise of rights of self-help granted under Section 6.6, 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. Any non-exclusive Easement granted under this Article 3 shall in all events be subject to the concurrent use by the Retail Owner for all uses contemplated under this Declaration which do not interfere with or materially adversely affect the right of the Residential Owner.
- (j) With respect to the Maintenance of the Residential Building, Shared Facilities, Residential Owned Facilities or Residential Easement Facilities located in the Retail Building, Maintenance expressly includes the right of entry in accordance with this Article 3 with notice (except in an Emergency Situation) by Residential Owner and its contractors, agents and employees, into any areas thereof and the right to perform Maintenance as and when needed (including, without limitation, the right to temporarily remove wall, floor and ceiling sections to provide access to areas requiring Maintenance), using reasonable efforts to minimize damage

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caused by such Maintenance and to repair any such damage; provided, however that (i) where possible, Residential Owner shall exercise its right of entry during those hours of the day when such exercise will cause the least possible disturbance to the Occupants of the Retail Building, and (ii) the responsibility to repair any damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to substantially the same condition existing immediately prior to such damage.

3.2 Grant of Easements. The following Easements in, to, under, over, upon and through portions of the Retail Property in favor of the Residential Property are hereby granted:

(a) Ingress and Egress and Use. Retail Owner hereby grants to Residential Owner a non-exclusive Easement for ingress and egress for Persons, material and equipment in, over, on, across and through the Retail Property, but only to the extent reasonably necessary for the use, operation, Alterations, and Maintenance (but only if and when such Alterations and/or Maintenance is required or permitted under this Declaration) of:

- (i) the Residential Building;
- (ii) any Facilities located in the Retail Property which provide or are necessary to provide the Residential Building with any utilities or other services necessary to the operation of the Residential Building, including, without limitation, the Residential Easement Facilities, and the Residential Owned Facilities;
- (iii) any other areas in the Retail Property as to which an Easement for use or Maintenance has been granted to Residential Owner, the obligation to perform a service has been imposed by Section 6.1, or the option to perform a service is available to Residential Owner under Section 6.6; and
- (iv) to permit the exercise of the rights of self-help granted to Residential Owner pursuant to this Declaration or otherwise during any period in which said rights may be exercised.

(b) Residential Property Structural Support. In addition to the rights and obligations of the parties set forth in Article 5, Retail Owner hereby grants to Residential Owner a non-exclusive Easement in all Structural Supports located in or constituting a part of the Retail Property for the support of:

- (i) the Residential Building,
- (ii) any Facilities or areas located in the Retail Property with respect to which Residential Owner is granted an Easement, and
- (iii) any Residential Owned Facilities.

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- (c) Use of Facilities Benefiting Residential Building. Retail Owner hereby grants to Residential Owner a non-exclusive Easement for the use for their intended purpose of all Facilities (including, without limitation, the Shared Facilities but specifically excluding the Residential Easement Facilities, for which an Easement is granted under Section 3.2(d) below) which are:
- (i) located in the Retail Property, including Residential Owned Facilities and Shared Facilities; and
 - (ii) connected to Facilities located in the Residential Building which provide or are necessary to provide the Residential Building with any utilities or other services necessary to the operation of the Residential Building.
- (d) Residential Easement Facilities. Retail Owner hereby grants to Residential Owner a non-exclusive Easement permitting the existence, attachment, and Maintenance of the Residential Easement Facilities.
- (e) Building Common Walls, Ceilings and Floors. Retail Owner hereby grants to Residential Owner a non-exclusive Easement for support, enclosure, use and Maintenance with respect to those Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Residential Parcel and the Retail Parcel.
- (f) Utilities.
- (i) Retail Owner hereby grants to Residential Owner (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive Easements for utility purposes required by the Residential Property, in those areas of the Retail Property where such utilities are currently located or may hereafter be located.
 - (ii) If, at any time, it shall become necessary to relocate or add to utility Easements (including installation of Facilities) other than where currently located or to be located as part of the Retail Property in order to provide or upgrade utility service to the Residential Property, Retail Owner agrees to grant such additional or relocated utility Easements (at such location agreed to by the Retail Owner and the Residential Owner in the exercise of their reasonable judgment, but not within any space occupied by any Occupant of any portion of the Retail Property) provided:
 - (A) such Easements do not unreasonably interfere with the reasonable use and enjoyment of the Retail Property for the purposes for which the Retail Property is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available,
 - (B) the Retail Owner shall not be required to grant an Easement which would convert otherwise available space for commercial use, occupancy or storage unless such relocation or additional

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Easements are required by Law and no other space is reasonably available, and the Retail Owner is equitably compensated for the value of such converted space, and

- (C) the Residential Owner shall pay the Retail Owner's reasonable costs and expenses in connection with granting such Easement and restoring or repairing any property damaged by the installation of a Facility on the Easement.

(g) Residential Building Encroachments.

(i) Retail Owner hereby grants to Residential Owner an exclusive Easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in substantially the same location or result from the construction of the Building (or any of the improvements therein) or if, by reason of any settlement or shifting of the Building, any part of the Residential Building or Residential Owned Facilities not currently located within the Retail Parcel encroaches or shall hereafter encroach upon any of the Retail Parcel.

(ii) This Easement shall exist only so long as the encroachment portion of the Residential Building or such Facilities continues to exist, or replacements are made in substantially the same location which do not enlarge the encroachment in any material respect. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately enlarged in any material respect.

(h) Exterior Maintenance. Retail Owner hereby grants to Residential Owner, to the extent needed, a non-exclusive Easement for ingress and egress of Persons, machines, materials and equipment on the exterior of the Retail Building to the extent reasonably necessary to permit window washing and exterior Maintenance of the Structural Supports or Façade. The Owners shall cooperate in coordinating access and exterior staging in order to implement the provisions of this Section 3.2(h).

(i) Residential Owned Facilities. Retail Owner hereby grants to Residential Owner a non-exclusive Easement permitting the existence, attachment and Maintenance of Residential Owned Facilities that are located in the Retail Property.

(j) Shared Facilities.

(i) Retail Owner does hereby grant to Residential Owner a non-exclusive Easement with respect to Persons, material and equipment to permit the use, operation and Maintenance of the Shared Facilities by Residential Owner and its Permittees as is necessary or desirable for the use and operation of the Residential Building by Residential Owner (the foregoing shall include the right to maintain any ductwork, wiring, equipment or other connections as are necessary or appropriate to ensure the ongoing

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use and function of and to use and connect to the Shared Facilities by the Owners).

- (ii) In furtherance of the rights under this Section 3.2(j), Residential Owner shall have the right (but not be obligated) to enter the Retail Building at all reasonable times and, in the event Residential Owner needs to gain access to such portions of the Retail Building as contain guest rooms, or any Occupants living quarters accompanied by a representative of Retail Owner for the purpose of (A) obtaining necessary access to the Shared Facilities and/or (B) facilitating the use or operation of the Shared Facilities; provided, however, that Residential Owner shall exercise commercially reasonable efforts to minimize interference with the use and operation of the Retail Building in the exercise of the foregoing rights of Residential Owner.
- (iii) The foregoing shall include, without limitation, the right, upon reasonable prior notice to and upon the consent of Retail Owner (which consent shall not be unreasonably withheld, delayed or conditioned), to schedule and temporarily shut down the least number of Shared Facilities required under the circumstances (which shall be shut down in cooperation with Retail Owner as to timing, nature and manner of any interruption or stoppage of services or utilities in order to minimize the impact of any such shut-down to the Retail Building and its Occupants) in connection with the Maintenance of the Shared Facilities for which Residential Owner is responsible pursuant to this Declaration.

ARTICLE 4

STANDARDS FOR CONSTRUCTION

4.1 Performance Standards for Construction.

- (a) Prior to commencement of any construction permitted hereunder to be undertaken by one Owner within or affecting the Property of the other Owner:
 - (i) the Owner causing such construction (the "**Constructing Owner**") shall give the other Owner (the "**Non-Constructing Owner**") not less than five (5) Business Days prior written notice of such planned Work,
 - (ii) the Constructing Owner shall be responsible for obtaining all permits and approvals from applicable federal, state and local authorities for such construction,
 - (iii) the Constructing Owner shall diligently perform such construction in such manner as to reasonably minimize interference with the use and enjoyment of the Building of the Non-Constructing Owner and its Permittees, and

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- (iv) the Constructing Owner shall provide evidence of the insurance required under Section 8.1(c) hereof.
- (b) In no event shall a Constructing Owner do or permit any act which would adversely affect the structural safety, integrity, or waterproof nature of a Building.
- 4.2 Construction Contracts. If and to the extent that the applicable Work is not performed as permitted or required by the terms of Article 5, Article 6, Article 9, or otherwise with respect to any Shared Facilities, the Constructing Owner shall use reasonable efforts to include in any construction contract for any construction performed pursuant to this Declaration a provision pursuant to which the contractor:
- (a) recognizes the separate ownership of the Retail Building and the Residential Building 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 Parcel of the Constructing Owner, and
- (b) agrees, to the extent permitted by Law, that no lien or claim may be filed or maintained by such contractor or any subcontractors against the Non-Constructing Owner's Property 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.
- 4.3 Restoration Obligations.
- (a) Upon the completion of any construction within another Owner's Building, the Constructing Owner shall repair any damage or restore any modification to a Building caused by such construction in such a manner as to restore such Building to substantially the same condition which existed immediately prior to the commencement of such construction.
- (b) To the extent that the Constructing Owner fails to restore the Non-Constructing Owner's Building as required herein to a condition as good as its previous condition, the Non-Constructing Owner:
- (i) may assess the actual costs incurred by the Non-Constructing Owner to effect such restoration against the Constructing Owner's Property and
- (ii) shall have all of the rights of a Creditor Owner pursuant to the provisions of Article 10 hereof.

ARTICLE 5

STRUCTURAL SUPPORT

- 5.1 Structural Safety, Integrity, and Waterproof Nature. No Owner shall do or permit any act which would or could impair, undermine, or adversely affect the structural safety, integrity, or

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waterproof nature of the Structural Supports, the Façade, the roof of or any other portion of a Building.

5.2 Construction of Support.

- (a) The Owner responsible for any adverse effect on the structural safety, integrity, or waterproof nature of the Structural Supports, the Façade, the roof of or any other portion of a Building shall commence the construction of all necessary remedial structural support within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by Architect and the other Owner of such Building (whose approval shall not be unreasonably withheld, conditioned or delayed).
- (b) 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.
- (c) The provisions of Section 9.2 and Section 9.3, and not this **Article 5**, shall apply if the adverse effect of the structural safety, integrity, or waterproof nature of a Building results from a fire or other casualty.
- (d) 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 5**, 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, safety, or waterproof nature of a Building.

5.3 Effect of Delay. If delay in constructing necessary remedial structural support would endanger the structural safety, integrity, or waterproof nature of any portion of a Building, or responsibility for providing structural support or waterproofing cannot readily be determined or is disputed, and it is not likely that such Work will be commenced in time to avoid a reduction in structural integrity, safety, or waterproof nature, then the Owner of the portion of such Building in which the reduction occurred or is occurring shall, upon not less than ten (10) Business Days' advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide necessary remedial structural support or waterproofing as and wherever required, or the Owners shall jointly undertake to provide substitute or additional structural support or waterproofing; provided, however, the Owner who is ultimately determined to be responsible for the for any adverse effect on the structural safety, integrity, or waterproof nature shall be liable for and pay all costs and expenses incurred as a result of the provision of any necessary remedial structural support or waterproofing.

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ARTICLE 6

MAINTENANCE OBLIGATIONS AND SERVICES TO OWNERS

6.1 Services and Maintenance. In addition to each Owner's obligations to maintain its respective Property, as provided in Article 9 below, the applicable Owner designated in the corresponding EXHIBIT 6.1(a) through 6.1(i) shall perform or furnish or cause to be performed or furnished the following Maintenance obligations and services set forth below to the applicable Building when, as and if required. With respect to any Maintenance or service being provided to another Owner, the Maintenance and services which such Owner provides under this Section 6.1 may not be refused by the other Owner.

- (a) Storm Sewer and Sanitary Sewer Systems. Maintenance of Shared Sanitary and Storm Sewer Systems upon the terms and conditions set forth in EXHIBIT 6.1(a).
- (b) Fire Suppression System and System Testing. Maintenance and testing of the Fire Suppression System upon the terms and conditions set forth in EXHIBIT 6.1(b).
- (c) Shared Mechanical Rooms. Maintenance of the Shared Mechanical Rooms upon the terms and conditions set forth in EXHIBIT 6.1(c).
- (d) Cooling Equipment. Use and maintenance of the Cooling Equipment upon the terms and conditions set forth in EXHIBIT 6.1(d).
- (e) Emergency Generator. Use and Maintenance of the Emergency Generator upon the terms and conditions set forth in EXHIBIT 6.1(e).
- (f) Building Roofs. Maintenance of the Building roofs (including the roof of the Window Box), the roof structures, membranes, flashings and seals upon the terms and conditions set forth on EXHIBIT 6.1(f).
- (g) Trash Removal. Removal of trash and other refuse from the Building upon the terms and conditions set forth in Exhibit 6.1(g).
- (h) Snow Removal; Sidewalk Repairs. Removal of snow from the Building and repair to the sidewalk area immediately around the Building upon the terms and conditions set forth in Exhibit 6.1(h).
- (i) Other Shared Facilities. Maintenance of all other Shared Facilities not expressly described in Section 6.1(a) through Section 6.1(h) upon the terms and conditions set forth on EXHIBIT 6.1(i).

6.2 Cessation in Operations.

- (a) If any Owner (the "Non-Performing Owner") ceases or provides notice to the other Owner that it intends to cease providing any of the services that the Non-

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Performing Owner is obligated to provide pursuant to Section 6.1 and the Exhibits corresponding to Section 6.1 (collectively, the “**Non-Performing Owner Services**”) due to a Cessation in Operations (hereinafter defined), the other Owner shall have the right to perform all Non-Performing Owner Services and to charge the Non-Performing Owner for its share (as determined on the same basis as set forth in the Exhibits corresponding to Section 6.1) of the costs to perform the Non-Performing Owner Services.

- (b) For the purposes of this Section 6.2, a “**Cessation in Operations**” means either:
- (i) the Property belonging to the Non-Performing Owner ceases to be operated for the purposes described herein for a period of thirty (30) or more consecutive days without the Non-Performing Owner delivering to the other Owner within such thirty (30) day period any notice expressing the Non-Performing Owner’s intent to re-open and re-commence operations at its Property at levels comparable to the operations over the twelve (12) month period prior to the commencement of such thirty (30) day period, or
 - (ii) if the Non-Performing Owner does provide to the other Owner such a notice of intent to re-open its Property within such thirty (30) day period, the failure of the Non-Performing Owner to re-open its Property in the manner described herein within ninety (90) days after the date upon which the Non-Performing Owner ceases such operations.
- (c) Notwithstanding anything to the contrary contained herein, the foregoing right shall not in any way limit the self-help rights set forth in Section 6.6 below and anywhere else in this Declaration.

6.3 Obligation to Furnish Services.

- (a) Each Owner obligated to perform services hereunder shall make a good-faith effort to operate its Facilities and furnish (or cause to be furnished) all services required of it under this Article 6 in a manner consistent with its intended respective use as commercial or residential Property (as applicable) and the level of operation and management of comparable first-class properties in downtown Chicago, Illinois.
- (b) Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 6 but shall not be liable for interruption or inadequacy of service or loss or damage to property or business arising out of such interruption or inadequacy, except as may be provided in Section 6.6 or Section 6.8.
- (c) Each Owner who is obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an

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Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation.

(d) Each Owner who is obligated to Maintain any Facilities under Section 9.1 which are connected to other Facilities in a Building, the responsibility for whose Maintenance is another Owner's under this Article 6, shall perform its obligations under Section 9.1 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under Article 6.

(e) Where an exception exists to an Owner's obligation to perform Maintenance of Facilities described in an Exhibit to Article 6, such exception has been set forth in the Exhibit.

6.4 No Obligation to Maintain Other Owner's Facilities. In no event shall an Owner be obligated for Maintenance of the Easement Facilities or Owned Facilities of another Owner.

6.5 Payment for Services. Payment for services rendered pursuant to this Article 6 and other charges and fees related to such services, including Operating Expenses, capital expenditures, overhead and supervision fees, or the fees of a professional property manager, shall be made in accordance with the terms and provisions of the related subpart of EXHIBIT 6.5 attached hereto.

6.6 Breakdown in Service; Owner's Failure to Perform Services.

(a) If any system or Facilities providing an Essential Service (hereinafter defined) fails due to any circumstance beyond the reasonable control of an Owner obligated to perform any service with respect to such systems or Facilities pursuant to Section 6.1, the Owner entitled to receive such service pursuant to this Section 6.1 shall promptly provide notice to the Owner obligated to perform such service, whereupon the Owner obligated to perform such service shall work as expeditiously as is commercially reasonable to restore such Essential Service.

(b) For purposes of this Declaration an "Essential Service" is a service which is required to ensure the habitability, safety and welfare of the portion of the Property receiving such service, including, without limitation, heat (but only during times where failure to provide heat could jeopardize the health of Occupants of a portion of the Property, could affect the habitability of the Property, or could affect the business operations on the Property), power, water, gas, air conditioning (but only during times where failure to provide air conditioning could jeopardize the health of the Occupants of a portion of the Property, could affect the habitability of the Property, or could affect the business operations on the Property), structural maintenance, and fire and life safety systems.

(c) If an Owner shall fail to perform as required by the terms and conditions of this Article 6 (except when such failure is caused by another Owner or by Unavoidable Delay, or except when an Owner obligated to perform the service is

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entitled to discontinue such service pursuant to Section 6.8 hereof) and such failure shall continue for a period of ten (10) days after receipt of written notice thereof to the Defaulting Owner from the Creditor Owner, the Creditor Owner shall have the right to perform the same (without limiting any other rights or remedies of such Owner) until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Building or any of its Occupants.

- (d) During any period in which the Creditor Owner is performing pursuant to Section 6.6(c) hereof, the Defaulting Owner shall make payments to the Creditor Owner as provided in EXHIBIT 6.5.
- (e) If a dispute exists as to whether an Owner has failed to perform as required by the terms and conditions of this Article 6, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within thirty (30) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate an Owner's rights under this Article 6.

6.7 Data Unavailable from Metering.

- (a) Where the allocation of the cost of a service under Article 6 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 or otherwise providing 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.
- (b) Such Owner shall notify the other Owner who is responsible for a portion of such usage, at the time such Owner sends a Projection Notice or Statement or statement of Net Capitalized Cost of Replacement under EXHIBIT 6.5 relating to such service, in reasonable detail of its determination of estimated usage and the method for such determination.
- (c) If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that the estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties for such period.
- (d) If, within thirty (30) days after receipt of such notice, the Owner receiving such notice in good faith disputes that the estimated usage has been determined reasonably, the receiving Owner shall so notify the determining Owner.
- (e) If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then any Owner may submit the question to an expert agreed to by the parties for its advice. Such

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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 such expert. Subsequent failure to agree shall constitute an Arbitrable Dispute, if the amount involved exceeds \$20,000 (in 2016 Equivalent Dollars).

6.8 Discontinuance of Services Which are not Essential Services.

- (a) If, at any time, a Defaulting Owner fails to perform its obligations under this **Article 6** or to pay a Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of this **Article 6** within ten (10) days after receipt of written notice from the Creditor Owner demanding performance of its obligation or payment of said sum of money, which notice specifically references this **Section 6.8** and which contains a statement that the Creditor Owner intends to discontinue furnishing services that are not Essential Services to be furnished by the Creditor Owner, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner may discontinue furnishing services that are not Essential Services to be furnished by Creditor Owner under this **Article 6** until the obligation is performed or said sum of money is paid; provided, however, that:
- (i) if the Defaulting Owner in good faith disputes the Defaulting Owner's obligation to perform such obligation or to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, 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 (if such dispute is subject to 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 perform such obligation or pay said sum of money and thereafter such obligation is not performed or such sum of money remains unpaid in excess of five (5) days after any such determination; and,
 - (ii) the Creditor Owner may not discontinue any such services if such 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 economic loss).
 - (iii) Notwithstanding that there may be a dispute as to the amount owed, an Owner shall nevertheless continue making payments as required under this **Article 6** and the applicable subparts of **EXHIBIT 6.1** and **EXHIBIT 6.5** 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 6.5**.

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- 6.9 Replacement of Shared Facilities. Subject to the terms of this Declaration, an Owner may, in replacing Shared Facilities, replace such Shared Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better, provided such replacement Shared Facilities do not materially increase the obligations of an Owner in providing services under Section 6.1 and do not materially increase the cost to any Owner of any payments required to be made by such Owner (as a Contributing Party or a Benefited Owner) as a result of the decision by a Replacing Party or Operating Owner to install replacement Shared Facilities that are more expensive than the replacement cost of Shared Facilities comparable to the Shared Facilities that are being replaced. Any Owner may correct the description of the Shared Facilities or references to locations of Shared Facilities described in the Exhibits corresponding to Section 6.1 by notice to the other Owner if such correction is due to error in the description or due to the replacement of such Shared Facilities.

ARTICLE 7

INDEMNIFICATIONS; COVENANTS OF OWNERS

- 7.1 Indemnity by Owners. Each Owner (hereinafter in this Section 7.1, the “**Indemnifying Owner**”) covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owner and the other Owner’s Mortgagees, partners, beneficiaries, members, managers, stockholders, directors, officers, agents, and employees (hereinafter in this Section 7.1, collectively, the “**Indemnitee**”):
- (a) from and against any and all claims, actions or proceedings, losses, liabilities, damages, judgments, costs and expenses (herein, a “**Claim**”) against Indemnitee, and by or on behalf of any Person other than the Indemnitee or its affiliates arising from or out of the following:
 - (i) the Indemnifying Owner’s or its Permittees’ use, possession, Maintenance, or operation of the Indemnifying Owner’s portion of the Property or the Indemnifying Owner’s Owned Facilities or Easement Facilities, or activities therein,
 - (ii) the Indemnifying Owner’s use, exercise or enjoyment of an Easement or Facility (shared or otherwise),
 - (iii) the Indemnifying Owner’s failure to perform its Maintenance or other obligations hereunder, or
 - (iv) the Indemnifying Owner’s performance of any Alterations.
 - (b) from and against all costs, reasonable attorneys’ fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any Claim arising therefrom, but only to the extent the Indemnitee is not insured against (or required to be insured against) such losses, liabilities, damages, judgments, costs and expenses under valid and collectible insurance policies.

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- (c) In no event shall the Indemnifying Owner have any indemnification obligation to the Indemnitee to the extent occasioned by the negligent or wrongful acts or omissions of any Indemnitee or its affiliates or its Permittees. The indemnification obligations of the Indemnifying Owner hereunder shall not include or be deemed to extend to the Permittees or affiliates of the Indemnitee; provided, however, that this provision shall not limit the obligation of the Indemnifying Owner with respect to any claims made against an Indemnitee by any such Permittees.
- (d) In case any action or proceeding is brought against any Indemnitee by reason of any such Claim, Indemnifying Owner, upon notice from any such Indemnitee, covenants to resist or defend such Claim with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such Claim shall be presumed reasonably satisfactory to each such Indemnitee.
- (e) Indemnifying Owner may not settle a Claim without the consent of each affected Indemnitee, which consent shall not be unreasonably withheld, delayed or conditioned.
- (f) Notwithstanding anything to the contrary contained herein, the foregoing indemnity obligations are in no way limited by the coverage limits of applicable insurance policies.

7.2 Liens.

- (a) Each Owner (the "**Liening Owner**") shall remove any mechanics', materialmen's, manager's, broker's or any other similar lien, in each case arising by reason of the acts of the Liening Owner, its employees, agents, contractors and Occupants or any Work or materials or services for which the Liening Owner, its employees, agents, contractors or Occupants has contracted:
- (i) against any other Owners' portion of the Building or Owned Facilities; or
 - (ii) 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 any other Owner (such other Owner in subclause (i) or (ii) being the "**Impacted Owner**").
- (b) The Liening Owner shall cause such removal to occur before the first to occur (the "**Removal Deadline**") of the following:
- (i) thirty (30) days after the filing thereof by a third party that is not an Owner filing a lien in accordance with this Declaration,
 - (ii) ten (10) days after notice of commencement of foreclosure proceedings of such lien,

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- (iii) the time set forth in any mortgage or deed of trust applicable to an Owner's Property if such Owner's Property is affected so long as such Owner shall have first provided the Liening Owner notice of such mortgage or deed of trust and the Removal Deadline set forth therein, and
 - (iv) immediately upon the demand of an Owner if such other Owner's Property is affected and such other Owner is then engaged in bona fide discussions for the sale, assignment or financing of its interest in any part of its Property.
- (c) Notwithstanding the provisions of Section 7.2(a) or Section 7.2(b), the Liening Owner shall not be required to remove such lien prior to the Removal Deadline if:
- (i) such lien cannot be foreclosed; and
 - (ii) prior to the Removal Deadline, the Liening Owner:
 - (A) 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
 - (B) shall (unless other security already exists, such as a title indemnity fund for a Mortgagee) deliver to the Impacted Owner either, at the Impacted Owner's option:
 - (i) cash or a surety bond from a responsible surety company 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
 - (ii) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company, the Impacted Owner and the Impacted Owner's Mortgagee.
- (d) 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 satisfy the requirements of Section 7.2(c)(ii)(B)(i).
- (e) In any event, a Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure.

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- (f) If the Liening Owner fails to comply with the foregoing provisions of this Section 7.2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees and litigation expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under this Section 7.2.
- (g) Notwithstanding the provisions of this Section, the foregoing terms of this Section 7.2 shall not be applicable to any lien that is not paid as a result of the fact that the Impacted Owner timely failed to pay its Allocated Share of the costs of any Work as required pursuant to the terms of this Declaration.

7.3 Compliance With Laws.

- (a) Each Owner:
- (i) shall comply with all Laws, if noncompliance by such Owner with respect to its portion of the Property or any part thereof, its Owned Facilities, its Easement Facilities, or areas for which such Owner has been granted an exclusive Easement would subject the other Owner or any of its Occupants to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or any of its Occupants or for a Building or would jeopardize the other Owner's right to beneficially occupy or utilize its respective portion of a Building or any part thereof, its Owned Facilities, its Easement 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.
 - (ii) shall be responsible for, and shall at all times maintain at its sole cost and expense, any and all vault and sidewalk permits or licenses related to any vault located immediately adjacent to and serving such Owner's Property. The Owner of the portion of the Property immediately adjacent to such vault property shall have the sole and exclusive right to use of any such underground vault areas located immediately adjacent to and serving such Owner's Property.
 - (iii) shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Property or any portion thereof or the requirements of any insurance coverage on the other Owner's portion of a Building, its Owned Facilities, or its Easement Facilities, if noncompliance by it with respect to its respective portion of a Building or any portion thereof, its Owned Facilities, or its Easement Facilities would:

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- (A) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by all Owners (unless the non complying Owner pays all such increases), or
 - (B) render the other Owner's portion of a Building, Owned Facilities, or Easement Facilities uninsurable, or
 - (C) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of a Building, Owned Facilities, or Easement Facilities; and
- (iv) shall deliver to the other Owner, within ten (10) Business Days after receipt, a copy of any written report, citation or notice having an effect on or relating to compliance of such Owner's Property with Laws.

7.4 Zoning.

- (a) No Owner shall: (i) make any Alterations; (ii) allow any use of their respective portions of the Building; or (iii) take or fail to take any action, any of which would violate the provisions of the Existing Zoning as to such Owner's Building or as to the Building of the other Owner.
- (b) Applications for variations, changes, modifications or amendments to the provisions of the Existing Zoning applicable to the Retail Property or Residential Property may be filed and processed solely by the Owner of the portion of the Building directly affected by such application and shall not require the joinder of the other Owner; provided, however, that both Owners shall be required to approve any such variations, changes, modifications, or amendments that would:
 - (i) change the permitted use under such ordinances or this Declaration,
 - (ii) adversely affect the use of the Retail Property or Residential Property, or
 - (iii) contradict any of the terms or provisions of this Declaration.
- (c) If any application for a zoning variation, change, modification, or amendment is required to be approved by both Owners and the other Owner agrees to such variation, change, modification or amendment, the Owner requesting such zoning variation, change, modification or amendment shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of such applications or other instruments.

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7.5 Use.

- (a) The following uses are permitted in the area delineated herein as the Property: multi-unit residential; financial services; food and beverage retail sales (except that a type 2 restaurant or tavern will not be allowed); office; personal service uses; retail sales; accessory parking; and accessory uses.
- (b) No use shall be permitted in all or any portion of the Property which does not comply with Law, or would increase significantly the cost of insurance maintained by the other Owner of any portion of a Building in which such use is contemplated.
- (c) The following uses shall not be permitted in the Retail Property or Residential Property without the consent of the other Owner, which may be withheld in such Owner's sole and exclusive discretion:
- (i) Any mortuary or funeral home;
 - (ii) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;
 - (iii) Any adult theater or live performance theater exhibiting nude or lewd performers or performances or lascivious behavior;
 - (iv) Any carnival or flea market;
 - (v) Any clinic, office or other facility performing abortions;
 - (vi) Any off-track betting store or parlor;
 - (vii) Any discount store;
 - (viii) The use, presence or release of Hazardous Materials, except in the ordinary course of the permitted and usual business operations conducted thereon, provided that any such use shall at all times be in compliance with all applicable environmental Laws;
 - (ix) Any foreign governmental offices;
 - (x) A massage parlor other than a day spa and/or salon;
 - (xi) Industrial purposes;
 - (xii) A gun shop or firing range;
 - (xiii) A salvage shop;
 - (xiv) For the purpose of manufacturing;

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- (xv) A methadone clinic or drug or alcohol dependency clinic; and
- (xvi) A dry cleaner or other use which produces odors that emanate beyond the premises occupied by the use (except for restaurant and other food uses otherwise not expressly prohibited hereunder and except for a dry cleaning drop-off and pick-up location in which the cleaning is performed off-premises and not performed at the Property).

7.6 Exterior Building Signage.

- (a) Any and all Building signage not prohibited by this Declaration, must comply with the following requirements:
 - (i) all exterior building signs must comply with applicable Laws;
 - (ii) all signs must be installed and operated in a first-class manner;
 - (iii) all signs must be professionally designed and fabricated; and
 - (iv) interior and exterior sign illumination is permitted, provided it complies with applicable Law.
- (b) Each Owner, at its sole cost, is responsible for any Maintenance of the Façade required due to the installation, removal or replacement of its respective signs. In all cases, the Façade shall be maintained in a safe, first-class order and condition.
- (c) Each of the Retail Owner and Residential Owner may replace and alter its signs provided that such changes and/or alterations are consistent with the permitted terms set forth in Section 7.6(a) and Section 7.6(b), respectively.
- (d) Any Owner responsible for Façade Maintenance shall have the right, at the expense of the Owner of such signage to temporarily remove such signage to the extent and for the time period necessary for the purpose of performing Façade Maintenance and shall promptly reinstall such signage, at the expense of the Owner of such signage, upon completion of such Maintenance.
- (e) Retail Owner shall have the exclusive use of the Window Box for display or signage purposes. All displays or signage installed within the Window Box shall comply with the requirements of this Section 7.6 as may be applicable with respect to the Window Box.

7.7 Environmental and Engineering Review.

- (a) Each Owner ("**Inspecting Owner**") upon no less than five (5) days advance written notice to the other 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**")

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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 non-Inspecting Owner or its designee(s) shall have the right to accompany the environmental engineer or architect at all such tests. The Inspecting Owner shall use reasonable efforts to minimize the disruption of the other Owner's operation of business or use in its portion of the Property and shall repair any damage to property of the other Owner caused by a Review and shall be subject to the indemnification obligations contained in Section 7.1 above.

- (b) The instances when an Owner may obtain a Review necessitating tests or inspections of the other Owner's portion of the Property are:
- (i) if the Inspecting Owner has entered into or will enter into a contract to sell or intends to finance or refinance its Property in which a requirement of said contract, financing or refinance is a Review (it being agreed that (A) a contract vendee or lender or potential lender in respect of an Owner's Property may be designated by an Inspecting Owner as the party to perform a Review and (B) no such designation shall relieve the Inspecting Owner of the obligations set forth in this Section 7.7 in connection with such Review); or
 - (ii) if the Inspecting Owner's then current Mortgagee has requested a Review; or
 - (iii) if a Review is required by Laws; or
 - (iv) if the Inspecting Owner, in good faith believes:
 - (A) that the other Owner may have breached the provisions of Section 7.3 or Section 7.5, as it relates to the matters which could be disclosed by a Review; or
 - (B) 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 8

INSURANCE

8.1 Insurance Required. Each Owner shall procure and maintain the following insurance:

- (a) Real and Personal Property.
 - (i) Each Owner shall keep its respective Building and respective Owned Facilities insured for no less than "all risk" coverage for an amount not

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less than one hundred percent (100%) of the insurable replacement cost thereof, subject to Section 8.2.

- (ii) Each Owner may, in its discretion, include or exclude from such insurance coverage improvements or betterments and personal property owned by Occupants of its respective Property.
- (iii) Each Owner shall separately insure on an "all risk" basis its loss of rental income (if applicable) or use caused by business interruption or extra expense incurred to reduce such loss of income covering a minimum period of one (1) year resulting from interruption of business caused by the occurrence of any of the risks insured against under the "all risk" property insurance, and shall pay all premiums for such coverage.
- (iv) Replacement cost shall be determined periodically by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.

(b) Public Liability for Residential Owner.

- (i) Residential Owner shall insure against public liability claims and losses on a commercial general liability form of insurance, at least as broad as Insurance Services Office coverage form CG 00 01, and if not included in the coverage form, with broad form coverage endorsements covering claims for personal or bodily injury or death, or property damage occurring in, on, under, within, upon or about the Property owned by Residential Owner, or as a result of operations thereon (including contractual liability covering insurable obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), but in all events for limits, as to Residential Owner and its portion of the Building, of not less than \$35,000,000 with such limit applying separately to this location/operation, combined single limit for personal and bodily injury and death and property damage.
- (ii) Limits of insurance may be reached in combination with an Umbrella coverage form.
- (iii) Residential Owner shall also obtain auto liability insurance for owned, non-owned and hired vehicles with minimum coverage limits of \$1,000,000. Such coverage shall be scheduled under Residential Owner's respective Umbrella liability policy.

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(c) Public Liability for Retail Owner.

- (i) Retail Owner shall insure against public liability claims and losses on a commercial general liability form of insurance, at least as broad as Insurance Services Office coverage form CG 00 01, and if not included in the coverage form, with broad form coverage endorsements covering claims for personal or bodily injury or death, or property damage occurring in, on, under, within, upon or about the Property owned by Retail Owner, or as a result of operations thereon (including contractual liability covering insurable obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), but in all events for limits, as to each Retail Owner and its portion of the Building, of not less than \$5,000,000 with such limit applying separately to this location/operation, combined single limit for personal and bodily injury and death and property damage.
- (ii) Limits of insurance may be reached in combination with an Umbrella coverage form.
- (iii) Retail Owner shall also obtain auto liability insurance for owned, non-owned and hired vehicles with minimum coverage limits of \$1,000,000. Such coverage shall be scheduled under Retail Owner's respective Umbrella liability policy.

(d) Builder's Risk.

- (i) Unless the Owners otherwise reasonably agree to the contrary, during any period of construction, renovation, Alterations or Work which has an estimated cost of \$1,000,000 or more, each Owner performing such construction, renovation, Alteration or Work shall carry (or cause its contractors to carry) "all risk" builder's risk insurance for not less than the completed value of the construction, renovation, Alteration or Work then being performed by such Owner or Owners or for any Alterations which require another Owner's consent under Section 14.1, unless such coverage is afforded elsewhere by such Owner's insurance policy.
- (ii) Coverage under this Section 8.1(d) shall only be required to the extent such coverage is not already provided within the property coverage under Section 8.1(a) and Section 8.1(b).

(e) Worker's Compensation. Each Owner shall or cause its contractors to carry worker's compensation insurance in amounts as required by Law and employer's liability, insurance in not less than the following amounts:

- (i) Employers liability each accident - \$1,000,000;
- (ii) Employers liability disease for each employee - \$1,000,000;

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- (iii) Employers liability disease policy limit - \$1,000,000.

8.2 Joint Policies; Insurance Companies.

- (a) In lieu of providing coverage as stipulated in Section 8.1(a), the Owners may agree to jointly carry “all risk” coverage as provided therein as a single “all risk” property insurance policy. Retail Owner shall be responsible for obtaining such policy, and the Allocated Share for the cost thereof shall be divided as follows: 97.69% for Residential Owner and 2.31% for Retail Owner, except that the costs for the coverage required under Section 8.1(a)(iii) will be divided based upon the actual costs incurred with respect to each Owner for such coverage.
- (b) Each Owner shall be a “named” insured under such jointly carried “all risk” policy, and the Owners shall apportion the premium as provided in Section 8.2(a).
- (c) Insurance policies required by Section 8.1 hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder’s Alphabetic and Financial Size Category Rating of not less than A X (or such lesser rating as the Owners and Mortgagees may agree) according to Best’s Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. If separate insurance companies provide any coverages required hereunder other than “all risk” property insurance then the Owners shall ensure that all such companies coordinate their coverages with the other, to ensure that there are no gaps in coverage, and any disputes regarding coverages will not delay adjustments of loss and payments to the insureds.

8.3 Insurance Provisions.

- (a) Each policy described in Section 8.1 (except to the extent the requirements are not customarily applicable to such type of insurance):
- (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 a “named insured” the Owner procuring such insurance, and the other Owner and its Mortgagee (as well as any Mezzanine Lender providing written request to the other Owner) shall be “additional insureds” under such policy solely with respect to the operations and obligations of the “named insured” Owner;
- (iii) shall provide (except for liability insurance described in Section 8.1(b), for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for

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loss occurring at a Property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase;

- (iv) shall provide that all losses payable under Section 8.1(a) (if the loss includes joint damage as described in Section 9.3(a)) or under Section 8.2(a) shall be paid to the Depository in accordance with the terms of Article 16 hereof, if funds are to be advanced prior to the submission of invoices for reconstruction costs, or unless the Owners otherwise agree;
 - (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, or non-renewal thereof to all insureds thereunder;
 - (vi) shall include a standard mortgagee endorsement and loss payable clause in favor of the Mortgagees reasonably satisfactory to them; and
 - (vii) shall provide coverage on an "occurrence" basis rather than a "claims made" basis, if available.
- (b) Insurance maintained by an Owner alone and not as part of a joint policy may be carried on a "blanket" basis with other policies.
- (c) Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by an Owner shall provide no less coverage (with the exception of deductible amounts) than the "Special Perils" coverage form (Insurance Services Office form CP 1030) of insurance (including endorsements extended to include coverage for Boiler & Machinery, Law and Ordinance, and other extensions of coverage as may from time to time be carried by prudent owners of similar first-class buildings in the City) currently promulgated by the Insurance Services Office, its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

8.4 Limits of Liability.

- (a) Insurance required by this Article 8 shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than every five (5) years (unless there is a substantial change in the Building or operations conducted in the Building or a significant or catastrophic event that adversely impacts the insurance marketplace thereby affecting the availability of insurance), to determine if such limits, deductible amounts and types of insurance are reasonable and prudent.
- (b) Initially, deductible amounts for insurance required under Section 8.1(a) (other than loss of rental income insurance) and Section 8.1(c) shall not exceed \$25,000

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unless the Owners otherwise agree to a different deductible amount, each in their reasonable discretion.

- (c) Deductible amounts for insurance required under Section 8.1(b) shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described above in this Section 8.4.
- (d) Limits of liability may not be less than limits required by the Owners' respective Mortgagees, notwithstanding amounts set forth above in this Article 8 and nothing contained in this Article 8 or in this Declaration shall in any way alter, limit, or affect any insurance requirements set forth in the respective Mortgages or other loan documents executed and delivered by an Owner to its Mortgagee.
- (e) With the consent of all Owners, the Owners may employ an insurance consultant to perform such review on their behalf, and the cost of employing any such consultant shall be shared by the Owners in accordance with the Allocated Share stipulated in Section 8.2(a).

- 8.5 Renewal Policies. Certificates of insurance for all renewal insurance policies evidencing renewal shall be delivered by each Owner to the other Owners and to the Mortgagees at least thirty (30) days prior to the expiration date of any such expiring insurance policy. If the Owners have agreed in accordance with the provisions of Section 8.2(a) to jointly carry "all risk" coverage and if the Retail Owner fails to provide and maintain such policy in accordance with the provisions of Section 8.2(a), or if an Owner fail to pay its share of the premiums or other costs for any such policy, then the other Owner or any Mortgagee may pay the Defaulting Owner's share and the costs thereof shall be due from the Defaulting Owner within ten (10) days after the Creditor Owner's or Mortgagee's written demand therefor.
- 8.6 Waiver. Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies, 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 related to the Shared Facilities maintained by an Owner on behalf of the Owners.
- 8.7 Conflict. If any portion of a Property has been converted to a condominium form of ownership pursuant to the Act, then in the event of any conflict between the terms of this Declaration and the agreement governing any portion of such condominium Property, the terms of this Declaration shall control with respect to such portion of such condominium property, except in those instances in which statutory requirements of the Act are required to take precedence.

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- 8.8 Supplemental Insurance Coverage. Notwithstanding anything to the contrary contained herein, each Owner shall be permitted to obtain at its sole cost and expense supplemental or additional insurance coverage above and beyond the limits specified in this Declaration. Any insurance so purchased shall be in excess over any other collectible insurance and not contributory with other valid collectible insurance.

ARTICLE 9

MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

9.1 Maintenance of Property.

- (a) Retail Property. Retail Owner shall, at its sole cost and expense, to the extent failure to do so would adversely affect the Residential Owner or the Residential Property:
- (i) Maintain and keep the Retail Building (including that portion of the Façade appurtenant to the Retail Building, the Window Box and all Facilities located in the Retail Property), the Retail Easement Facilities, and the Retail Owned Facilities in good and safe order and condition, and
 - (ii) make all repairs or replacements of, in, on, under, within, upon or about the Retail 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 good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.
- (b) Residential Property. Residential Owner shall, at its sole cost and expense, to the extent failure to do so would adversely affect the Retail Owner or the Retail Property:
- (i) maintain and keep the Residential Building (including that portion of the Façade appurtenant to the Residential Building, the roof of the Window Box and all Facilities located in the Residential Property), the Residential Easement Facilities, and the Residential Owned Facilities in good and safe order and condition, and
 - (ii) make all repairs or replacements of, in, on, under, within, upon or about the Residential 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 a good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

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- (c) Limitation on Maintenance Obligations. Notwithstanding anything to the contrary set forth in Section 9.1(a) or 9.1(b) above:
- (i) The terms of this Section 9.1 shall not be applicable to any of the following:
 - (A) Work expressly covered by the terms Section 6.1 hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article 9;
 - (B) damage caused by fire or other casualty;
 - (C) the Easement Facilities or Owned Facilities situated in an Owner's Building but which benefit or are owned by the other Owner; or
 - (D) Maintenance to the extent that the other Owner is responsible for the same pursuant to the terms of Article 5 or any other provisions in this Declaration.
 - (ii) The terms of this Section 9.1 shall not be deemed to require Maintenance by an Owner of any interior portion of its Building unless the same, or the failure to Maintain the same, (A) are visible from the outside of the Building, (B) affect or impair the utility of any Shared Facilities or Easements that benefit the other Owner, or (C) adversely affect the use or enjoyment of the other Owner's Property for its intended purpose.
 - (iii) Neither the terms of this Section 9.1 nor any other provision in this Declaration are intended to constitute a covenant for either Owner to operate within its Property.
- (d) Common Walls, Floors and Ceilings. The obligations of the Owners under this Section 9.1 shall be deemed to include an obligation to the center of Common Walls, Floors and Ceilings regardless of the exact location of the boundary between the respective Parcels; provided, however, the Owners shall coordinate Work with respect to Common Walls, Floors and Ceilings and share equally their cost, except that improvements or Maintenance benefiting only one Owner shall be performed by and shall be at such Owner's sole cost.

9.2 Damage Affecting Only Portion of a Property.

- (a) If any portion of the Property is damaged by fire or other casualty and if such damage occurs within one Owner's portion of its Property only and does not affect any other Owner's Property, any Shared Facilities, and does not affect the ability of an Owner to exercise any Easement rights granted under this Declaration, then any such damage shall be repaired and restored by the Owner of the portion of the Property in which any such damage occurs (i) if the damage is visible from the outside of the Building, (ii) so as not to adversely affect the use or enjoyment of the other Owner's Property for its intended purposes, and (iii) if

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Article 17 is applicable, 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) 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.

- (b) 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 the applicable damage to a Property is visible from the outside of the Building, or adversely affects the use and enjoyment of the other Owner's Property for its intended purpose, then:
- (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the ways in which such repair or restoration is not proceeding diligently and, if, upon expiration of fifteen (15) Business Days after the receipt of such notice, any such Work or repair or restoration is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or
 - (ii) in an Emergency Situation, the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same.
- (c) If Article 17 is applicable, 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 Defaulting Owner for all third party out-of-pocket costs and expenses reasonably incurred by the Creditor Owner in excess of said insurance proceeds and such other monies.
- (d) Repair and restoration under this Section 9.2 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owner's consent if such consent would not otherwise be required under Article 14.
- (e) Unless prohibited by Law, any such repair and restoration under this Section 9.2 shall be performed in a manner so as to repair and restore (A) any portions of the Building that are visible from the outside of the Building, (B) any Shared Facilities or Easements that benefit the other Owner, or (C) any portion of the Building if failure to do so would adversely affect the use or enjoyment of the other Owner's Property for its intended purpose.

9.3 Joint Damage.

- (a) If the Property is damaged by fire or other casualty and such damage (i) occurs within the Building (including without limitation any Structural Supports) of more

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- than one Property, (ii) affects more than one Property, or (iii) affects Shared Facilities or the ability of an Owner to exercise any Easement rights granted under this Declaration, then such repair and restoration shall be the joint responsibility of the Owners.
- (b) The Owners shall commence and pursue to completion such repair and restoration to completion in as timely a manner as practicable.
 - (c) The Owners shall jointly select a contractor to perform such repair and restoration from contractors who are licensed to do business in the State of Illinois and who have substantial experience in the construction and renovation of properties of similar age and type of construction, in the downtown Chicago area.
 - (d) Participation by an Owner in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of, such Owner's respective Building or Facilities so damaged. In the event the Owners fail to agree upon the selection of an Architect or a contractor or contractors, then the selection of an Architect or a contractor or contractors shall be an Arbitrable Dispute.
 - (e) The plans and specifications for such repair and restoration 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.
 - (f) Such plans and specifications shall provide for the damaged portion of the Property to be rebuilt to the extent necessary to provide the same functionality and appearance to the portions of the Property with respect to Easements, Shared Facilities, functionality, services and appearance as such Property had prior to such damage, unless prohibited by Law and subject to the approval of the Mortgagees. Notwithstanding the foregoing, neither Owner shall be required to repair or restore any interior portion of its Building unless the same, or the failure to repair or restore the same, (A) is visible from the outside of the Building, (B) affects or impairs the utility of any Shared Facilities or Easements that benefit the other Owner, or (C) adversely affects the use or enjoyment of the other Owner's Property for its intended purpose.
 - (g) The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to each of the Owners and their Mortgagees a set of the plans and specifications which it has prepared or caused to be prepared.
 - (h) 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

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Article 17 hereof, the insurance proceeds held by the Depositary and any other monies deposited with the Depositary pursuant to **Section 9.5** hereof for application against the cost and expense of any such repair and restoration.

- (i) Notwithstanding anything to the contrary contained in this Declaration, in the event that the Depositary receives proceeds of insurance or any Award, the Depositary shall cause to be made a determination of the portion of such proceeds attributable to each Property as well as the amount of the insurance proceeds that may be attributable to Shared Facilities. The Depositary shall be entitled to rely exclusively on the determination of an insurance adjuster (the "**Adjuster**") in making any determinations under this Declaration regarding the allocation of such proceeds. The Adjuster shall be selected by the Owners. The determination as to the allocation of insurance proceeds shall be made by the Adjuster in its sole but reasonable discretion, and shall be based on the extent of the damage suffered by each affected Property in proportion to the total damage suffered by the entire Property and the extent of the damage suffered by the Shared Facilities in proportion to the total damaged suffered by the entire Property.

9.4 Cost of Repairs.

- (a) If the cost and expense of performing any repair and restoration provided for in **Section 9.3**, hereof shall exceed the amount of available joint 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:
- (i) with respect to any portion of the Shared Facilities, if the cost of repair or restoration of the Shared Facilities is in excess of the insurance proceeds allocated to the same, then each Owner shall pay the excess in accordance with their respective Allocated Shares attributable to the applicable Shared Facility as set forth on **EXHIBIT 6.1** attached hereto, and
- (ii) with respect to any portion of a Building that does not constitute a Shared Facility, if the cost of repair or restoration of such portions of the Building is in excess of the insurance proceeds allocated to the same, then each Owner shall pay the amount of excess allocable to its Building.
- (b) Notwithstanding the foregoing, if an Owner has not carried the insurance required under this **Article 9** and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

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9.5 Deposit of Costs.

- (a) In any instance of repair or restoration pursuant to Section 9.3 or Section 9.4 hereof, an Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum or a guaranteed maximum price, has theretofore been executed.
- (b) If said estimate, stipulated sum or guaranteed maximum price, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owner demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 9.4.
- (c) In lieu of depositing its share of such excess amount or deductible amount based upon said estimate, stipulated sum, guaranteed maximum price 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 and the Mortgagees. Such security may be in the form of, but shall not be limited to:
- (i) an irrevocable and unconditional letter of credit reasonably satisfactory to the other Owner and its Mortgagee (if any), in favor of the Depository in the face amount of the share owed, or
 - (ii) an irrevocable loan commitment, reasonably 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.
- (d) 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.
- (e) 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 9.5, or fails to deliver the security provided for above within fifteen (15) 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

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the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

9.6 Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage to a Property, 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 Property, then the ratio of insurance proceeds attributed to such Owner's portion of the Property by the insurer or the Owner to the total insurance proceeds made available by the insurer or the Owner for the repair and restoration.

9.7 Declaration Not to Repair.

- (a) If the Property is destroyed or substantially damaged, and both of the Owners do not agree not to rebuild (e.g., Retail Owner desires to rebuild and Residential Owner desires to not rebuild), then the provisions of Section 9.3 shall apply and the Building shall be repaired and restored.
- (b) If at the time of any casualty a portion (but not all) of a Parcel has been submitted to the Act, for purposes of this Section 9.7, the Owner of such Parcel shall be deemed to have agreed to rebuild the Building located in such Parcel unless both the Condominium Association governing the portion of such Parcel submitted to the Act and the Owner of any portion of such Parcel not submitted to the Act unanimously agree not to rebuild the Building located in such Parcel.
- (c) If the Property is destroyed or substantially damaged, and the Owners unanimously agree not to rebuild, repair or restore such Property, such Property shall be demolished to the extent necessary to comply with all applicable Laws. In such event:
 - (i) the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, 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 Property, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Property to the total insurance proceeds paid by reason of such damage;
 - (ii) such demolition shall be deemed to be a "repair or restoration" to which the provisions of Section 9.3, Section 9.4, Section 9.5, and Section 9.8 are applicable except that demolition, and not construction, shall be performed;
 - (iii) after such demolition, the parties shall obtain an appraisal of the Property by an MAI appraiser and shall offer the Property for sale at the appraised

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price, or such other price as the Owners agree upon and failure of the parties to agree upon an MAI appraiser shall be an Arbitrable Dispute; and

- (iv) after sale of the Property upon terms agreed to by the Owners, the Owners shall divide the proceeds in accordance with a formula determined by such MAI appraiser, based on use of the Retail Building and the use of the Residential Building, the income generation capacity of the Retail Building and the Residential Building, the size of such Buildings, and such other factors as would typically be considered in determining the appraised value of such Buildings.
- (d) For purposes of this Section 9.7:
 - (i) each Owner shall be responsible for amounts payable within their respective deductibles if separate coverages are maintained. If the Owners carry one or more joint policies pursuant to the provisions of Section 8.2, any deductibles shall be allocated in accordance with Section 8.2(a); and
 - (ii) business interruption insurance shall not be deemed to be insurance proceeds.

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

ARTICLE 10

LIENS, DEBTS, INTEREST AND REMEDIES

10.1 Failure to Perform.

- (a) If at any time, any Owner fails within fifteen (15) Business Days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration or any other time period expressly provided for such payment to be made (thereby becoming a Defaulting Owner) then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have:
 - (i) a lien against the portion of the Building and Parcel owned by the Defaulting Owner (which shall include all condominium units with a Building and Parcel if all or a portion of such Property has been converted to a condominium form of ownership); and
 - (ii) in the event of 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 a Building or Parcel or otherwise under insurance policies carried pursuant to Article 7 hereof, to secure the repayment of such sum

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of money and all interest on such sum accruing pursuant to the provisions of this **Article 10**.

- (b) 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.
- (c) 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, whereupon a Creditor Owner promptly shall release its lien upon payment in full.
- (d) Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Building or Property owned by the Defaulting Owner, except for the following (a "**Prior Lien**"):
 - (i) a lien for ad valorem real estate taxes, or
 - (ii) a Mortgage which has been recorded against the applicable portion of the Building or Property 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 **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 **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 a Creditor Owner has recorded a notice of lien under Section 10.1 of this Declaration, which lien has not been foreclosed, released or satisfied in full, and if such portion of the Property or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of such sale the lesser of:
 - (i) an amount sufficient to satisfy that portion of the unpaid Default Amount; and
 - (ii) the entire proceeds from the sale, minus any amount paid to satisfy any Prior Liens.
- (c) Following any such sale, the Creditor Owner, shall continue to have:

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- (i) a lien on the Defaulting Owner's portion of the Property to secure repayment of any unpaid portion of the Default Amount and
 - (ii) the right to the proceeds of any subsequent sales of such Defaulting Owner's portion of the Property, as provided in this **Article 10**.
- (d) 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 is to receive to satisfy its lien shall be deposited with the Depository or other escrow acceptable to the Creditor Owner and held for disbursement at the joint order of the Owners or as directed by court order or by the arbitrator in such arbitration, as applicable.
- 10.3 **Mortgagee's Subrogation.** The Mortgagee on all or any portion of an Owner's Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this **Article 10** affecting the Property secured by its Mortgage, and to receive an assignment of such lien, upon payment of the amount secured by such lien.
- 10.4 **Interest Rate.** Interest shall accrue on all sums owed by a Defaulting Owner to a Creditor Owner (whether or not the specific provision of this Declaration requiring payment by a Defaulting Owner to a Creditor Owner expressly references such interest) and shall be payable from the date any such sum first became due hereunder (after expiration of any grace periods) until paid in full, at a rate of interest equal to a floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by JPMorgan Chase Bank at Chicago, Illinois or any successor thereto as its base or prime or reference rate of interest, or if a base or reference rate is not announced or available, then interest shall accrue at the annual fixed rate of eighteen percent (18%).
- 10.5 **Cumulative Remedies.**
- (a) 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.
 - (b) An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Declaration.
 - (c) The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or at Law and equity; provided, however, that, notwithstanding any other provision herein to the contrary, no Owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from the other Owner as a result of any breach by the other Owner of its obligations under this Declaration.
- 10.6 **No Set-Off.** Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the

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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 later of the date the cause of action accrued or the party initiating such action first became aware of the right, claim or lien, but in all events subject to such other shorter period as may be provided by Law.
- 10.8 Attorneys' Fees. The non-prevailing party in any action brought by a Creditor Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.
- 10.9 Self-Help.
- (a) Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Declaration which grants an Owner the right to perform an obligation which the other Owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default.
 - (b) The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorney's fees, including appeals from judgments or orders) paid or incurred by the Creditor Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Declaration for nonperformance of an obligation, such provision shall control the provisions of this Section 10.9.

ARTICLE 11

ARBITRATION

11.1 Disputes Subject to Arbitration; Arbitration Procedure.

- (a) The following questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration 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 (or any successor thereto) in accordance with its then existing Commercial Arbitration Rules for expedited arbitration:
 - (i) monetary claims involving an amount as to any one claim not exceeding \$100,000 (in 2016 Equivalent Dollars); or

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- (ii) questions, differences, disputes, claims or controversies expressly made an Arbitrable Dispute or subject to arbitration under this **Article 11** by the terms of this Declaration; or
- (iii) questions, differences, disputes, claims or controversies involving any of the following matters:
- (A) selection of an insurance company or apportionment of insurance premiums under **Section 8.2** hereof;
 - (B) appointment of a contractor or contractors pursuant to **Section 9.3** or **Section 13.4** hereof;
 - (C) replacement of the Architect pursuant to **Section 18.1** hereof;
 - (D) other failure to agree on a matter described in **Section 18.1** or **Section 18.2** which this Declaration expressly requires the Owners to jointly decide or agree upon;
 - (E) disputes arising generally under **Article 6**, **Article 7**, **Article 9**, **Article 13** or **Article 14**; or
 - (F) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to arbitration.
- (b) The Owners shall cause the arbitrator to be selected within twenty (20) Business Days, and proceedings shall commence within fifteen (15) Business Days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules.
- (c) In the case of disputes where the subject for arbitration is the joint selection or appointment of a Person to perform professional or other services, the decision of the arbitrator shall be limited to the Persons proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners.
- (d) 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.
- (e) 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

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is required to select a Person from those selected by the Owners and none meets such standards, terms or conditions.

- (f) Arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the other Owner of the filing of a claim and demand in arbitration on the day of filing.
- (g) Owners may not seek injunctive relief in the arbitration.
- (h) 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.
- (i) 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.

11.2 Monetary Adjustment (Equivalent Dollars).

- (a) For purposes of this Declaration, "**2016 Equivalent Dollars**" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2016.
- (b) The 2016 Equivalent Dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage):
 - (i) the numerator of which is the difference obtained by subtracting:
 - (A) the Consumer Price Index (as hereafter defined) for January, 2015 from
 - (B) the monthly Consumer Price Index last published prior to the date of such determination, and
 - (ii) the denominator of which is the Consumer Price Index for January, 2015.
- (c) As used herein, the term "**Consumer Price Index**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

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ARTICLE 12

UNAVOIDABLE DELAYS

- 12.1 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, while and as long as nonperformance 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 the Chicago metropolitan area, war or national defense preemptions, acts of God, energy or other utility shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) ("**Unavoidable Delay**") and the time limit for such performance shall be extended while and as long as such Unavoidable Delay causes such non-performance.
- 12.2 Notice of Unavoidable Delay. The Owner unable to perform (hereinafter in this Article the "**Non-Performing Delay Owner**") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay promptly after the onset of any such Unavoidable Delay. The Non-Performing Delay 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.
- 12.3 Self-Help. If non-performance is due to an Unavoidable Delay affecting the Non-Performing Delay 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 Delay Owner which are the subject of Unavoidable Delay; provided, however, that the Non-Performing Delay Owner shall not be deemed a Defaulting Owner by virtue of such non-performance resulting from such Unavoidable Delay and the exercise of such other Owner's self-help remedy.

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

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- 13.2 Payment of Award to Depository; Temporary Taking Awards. All Awards resulting from the taking of all or any part of a Building or Parcel, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depository by the Owners, regardless of the Owner who received the Award, except as otherwise provided in Section 13.3 and the Depository shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space not affecting Easements or services described in Section 6.1 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property.
- 13.3 Taking of Only One Parcel.
- (a) In the event of a taking (other than a temporary taking) of a part of a single Owner's Property or Owned Facilities only (not including any Easement Facilities or Owned Facilities of another Owner), then, subject to Section 13.6 hereof, the Owner of the portion of the Building or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Building or Owned Facilities to form an architectural and functional whole, to the extent that the failure to do so would adversely and materially affect an Easement in favor of any other Owner essential to the other Owner's operations or the services to be furnished the other Owner under Article 6.
 - (b) Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Building or Owned Facilities in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 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 20.10(c)(i).
 - (c) If the cost of repair or restoration is estimated to be less than \$100,000 (in 2016 Equivalent Dollars), then the Award need not be paid to the Depository.
 - (d) 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 reasonably necessary to the other Owner's operations in favor of the other Owner or the services to be furnished to the other Owners under Article 6 hereof, then
 - (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the ways in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) Business Days after the receipt of such notice, any such Work of repair or restoration is still not proceeding diligently, then a Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or

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- (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.
- (e) 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 Depository as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and such 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**, and a Creditor Owner shall not be required to obtain the consent of a Defaulting Owner.

13.4 Repair and Restoration by All Owners.

- (a) In the event of a taking other than: (i) a temporary taking described in **Section 13.2** hereof; (ii) a taking described in **Section 13.3** hereof; or (iii) a taking of all or substantially all of a Building or all of the Parcels underlying a Building, then, subject to **Section 13.6** hereof, the Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) approved by all Owners and their Mortgagees.
- (b) 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.
- (c) In the event 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.
- (d) If such repair and restoration is to be performed solely in the portion of a Building owned by one Owner, then the approval of any other Owner shall not be required with respect to the plans and specifications therefor which do not constitute Alterations requiring consent of the other Owners under **Article 14**, nor shall the consent of any other Owner be required with respect to the selection of a contractor. In such event, however, such Owner shall consult with the other Owner.
- (e) 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 a

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Building to form an architectural and functional whole, with such changes in such Building as shall be required by reason of such taking.

- (f) If, as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Article 2 and Article 3 hereof and for the furnishing of services under Article 6 hereof.
- (g) 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.
- (h) 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 Depository, from time to time, but only with the prior approval of the Owner or Owners in whose portion of the Parcel such repair and restoration is being performed, (which approval shall not be unreasonably withheld, conditioned or delayed), as such repair and restoration progresses, to disburse, in accordance with Article 17 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

13.5 Excess Award.

- (a) 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 13.4).
- (b) 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 (including parties with an interest in the other Owner's portion of the Property affected by such taking); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 20.10(c)(i).
- (c) If there is no apportionment in any judicial or administrative proceeding, the Owners affected by such taking shall petition for such apportionment, if possible. Otherwise, the Owners affected by such taking shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach resolution shall constitute an Arbitrable Dispute.

13.6 Demolition.

- (a) If, as a result of a taking (other than a temporary taking), any of the Owners reasonably determine that its portion of the Building can no longer be repaired or

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restored or operated on an economically feasible basis, then such Owner shall notify the other Owners of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Building as may be required by Section 13.3 and Section 13.4 hereof.

(b) 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 Owners or structural support for the other portion of the Building.

(c) 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 a Building, the Award for such taking shall be allocated to the Owners of such affected Building in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to such Owners, in accordance with said apportionment; 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 20.10(c)(i).

ARTICLE 14

ALTERATIONS

14.1 Permitted Alterations.

(a) An Owner (an "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations ("**Alterations**") to the part of a Building within such Altering Owner's portion of the Property; provided, however, (i) such Alterations shall not affect the vertical or horizontal dimensions of the Building, and (ii) all such Alterations shall comply with all of the provisions of this **Article 14**.

(b) Retail Owner may design and construct one or more spaces outside the ground floor of the Retail Building (on any level) in an area not closer than 100 feet from the main entrance to the Residential Building to accommodate an outdoor area for a restaurant which occupies a retail portion of such level.

(c) Retail Owner may relocate exterior doors opening onto State Street within the Retail Building to accommodate any reconfiguration of the Retail Building and ingress and egress to and from the Retail Building.

(d) Alterations which include relocation of Facilities serving the non-Altering Owner, shall be permitted, subject to compliance with the conditions set forth in this **Article 14**. Replacement of such Facilities may be made by an Altering Owner without consent of other Owner, subject to the provisions of Section 6.9.

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- (e) 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 5** (Structural Support), **Article 6** (Maintenance and Services), **Article 7** (Compliance With Laws), **Article 9** (Maintenance and Repair) and **Article 13** (Condemnation) 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**.
- (f) Alterations to an Owner's portion of the Building shall not be made without the prior written consent of the other Owner (unless otherwise expressly permitted by this Declaration) if such Alterations will:
- (i) during their performance or upon their completion, unreasonably diminish the benefits afforded to the other Owner by an Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;
 - (ii) during their performance or upon their completion, unreasonably degrade or diminish services to the other Owner under **Article 6**;
 - (iii) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to **Article 6** hereof, unless the Altering Owner assumes the increase in costs resulting from such Alterations;
 - (iv) materially alter the Building Façade;
 - (v) consist of drilling, coring, chopping, cutting, penetrating, exceeding load tolerances or otherwise making any opening or hole into any Structural Supports, the Façade or the Building roofs in violation of **Article 5** other than minor work which in the opinion of a structural engineer and/or a geotechnical foundations engineer would not materially affect the structural soundness of the Building;
 - (vi) 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;
 - (vii) have the potential of creating an Emergency Situation; or
 - (viii) materially impact any of the utility systems or Facilities shared by the Owners as contemplated by this Declaration.
- (g) 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 any other Owner, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owner a copy of the plans and specifications (and, if any Structural Supports will be affected, an engineering

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report describing the effect on such Structural Supports) showing the proposed Alterations and a reference to this Section 14.1.

- (h) 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 ten (10) Business Days after the request is made. No response during such ten (10) Business Day period shall be deemed confirmation that no consent is required.
- (i) If an Owner's consent is required and such other Owner consents to such Alterations or does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within ten (10) Business 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.
- (j) Within the ten (10) Business Day response period the other Owner may request:
- (i) additional information reasonably necessary for such Owner to assess the scope of the Work required with respect to the proposed Alterations, in which case the other Owner will be granted an additional ten (10) Business Days to respond from the date the other Owner receives such additional information; or
 - (ii) an extension of the time to respond which extension of time shall not exceed ten (10) Business Days from the date of the request.
- (k) The Owner whose consent is requested will not unreasonably delay its response, having in mind the scope and complexity of the proposed Alterations.
- (l) 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)(i), Section 14.1(a)(ii), or Section 14.1(e) 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)(i), Section 14.1(a)(ii), or Section 14.1(e) hereof, and shall specify the respect or respects in which its provisions are or will be violated.
- (m) If an Objecting Party in good faith asserts a violation of Section 14.1(a)(i), Section 14.1(a)(ii), and/or Section 14.1(e), 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).
- (n) 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

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this Section 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

- (o) An Owner in making Alterations, shall:
 - (i) perform all Work in a good and workmanlike manner and in accordance with good construction practices;
 - (ii) comply with all Laws, including, without limitation, the City building code; and
 - (iii) comply with all of the applicable provisions of this Declaration.
- (p) Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of a Building in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would 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 for which such Owner shall be responsible) 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.
- (q) An Altering Owner may perform Work during any hours permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance, the Altering Owner shall not unreasonably refuse to perform Work outside normal business hours and shall pay all costs associated with Work at times other than normal business hours, including overtime and delay costs.

14.2 Building Permits.

- (a) Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City or other government agency having jurisdiction thereof requires joinder of the other Owner.
- (b) If joinder by the other Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be reasonably necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of the other Owner's execution of the application, permit or other instrument.
- (c) If an Owner fails to execute said application or instruments when required hereunder to do so within ten (10) Business Days after receipt of such application

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and there is no dispute between the Owners concerning the affected Alterations, the other 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.

- (d) An Altering Owner shall send copies of any building permits to another Owner within the Building at such other Owner's request.

ARTICLE 15

ESTOPPEL CERTIFICATES

15.1 Request. Each Owner shall, from time to time, within ten (10) Business Days after written request from the other Owner ("**Requesting Owner**"), any prospective transferee of such Owner, any Mortgagee, Mezzanine Lender or any prospective mortgagee or mezzanine lender, 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 **Article 6** which in the aggregate are less than \$20,000.00 (in 2016 Equivalent Dollars) and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the Requesting Owner, and if there is any such sum, specifying the nature and amounts thereof;
- (d) Whether the Owner executing the Estoppel Certificate has performed or is performing Work other than services pursuant to **Article 6** hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the Requesting Owner under the provisions hereof, but has not yet charged to such Requesting Owner, and if there be any such Work, specifying the nature and extent thereof and the projected amount to be paid by the Requesting Owner;
- (e) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the 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

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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.

15.2 **Requesting Party.** If the requesting party is a Mortgagee, Mezzanine Lender or prospective mortgagee, or prospective mezzanine lender, the Owner on whose Property it holds or intends to hold a Mortgage or security interest will be deemed the Requesting Owner. If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the Requesting Owner.

ARTICLE 16

DEPOSITARY

16.1 Appointment of Depositary.

- (a) A depositary (the "**Depositary**") shall be appointed at or before such time as the duties of Depositary are to be performed, in the manner hereinafter provided to receive insurance proceeds and Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration.
- (b) The Depositary shall be appointed by the Owners jointly, with the consent of each such Owner's Mortgagee (to the extent such consent is required pursuant to such Owner's Mortgage), and shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) or a nationally recognized title insurance company with offices in downtown Chicago, Illinois or other bank or trust company agreed to by the Owners.
- (c) Any Owner may at any time propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) Business Days after receipt of the proposal by the other Owner, the disagreement shall become an Arbitrable Dispute.
- (d) Each Owner shall be responsible for a portion of the Depositary's reasonable fees and expenses for acting as Depositary equal to their share in the insurance proceeds or Award, as applicable, unless the Depositary is holding funds for the benefit of only one Owner, in which case such Owner shall be solely responsible

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for the Depository's reasonable fees and expenses for acting as Depository with respect to such matter. In either event, the Depository shall be entitled to retain said fees and expenses, free of trust, from monies held by it. Any Owner may propose to the other Owner how such fees and expenses shall be shared and if the Owners fail to agree on a cost sharing arrangement within ten (10) Business Days after receipt of an Owner's proposal, such disagreement shall become an Arbitrable Dispute.

- (e) Any Depository 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 Account Designation; Liability of Depository.

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

- (a) The Depository shall have no obligation to pay interest on any monies held by it, unless the Depository shall have given an express written undertaking to do so or unless all of the Owners for whose benefit monies are being held have requested that the Depository undertake to do so.
- (b) If the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and the applicable Owners, then the Depository, within thirty (30) days after request from any Owner given to the Depository and to the other applicable Owners and their respective Mortgagees, shall purchase

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with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within thirty (30) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impractical to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration.

- (c) Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository.
- (d) Monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own funds, unless the Depository shall have undertaken to pay interest thereon, and shall be held by the Depository in trust for the uses and purposes herein provided.

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

16.5 Resignation of Depository. Depository may resign by serving not less than sixty (60) days prior written notice on all of the Owners and Mortgagees. Within thirty (30) 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 transfer all funds, together with copies of all records held by it as Depository to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, and there are funds held by the resigning Depository, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, which qualifies under Section 16.1 hereof.

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ARTICLE 17

DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 Disbursement Requests.

- (a) Each request by the Architect (or other architect preparing the plans and specifications if no Architect is required to be appointed for the Work in question) acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any Award or other funds for application to the cost of the Work shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners of the affected portion of the Building, dated not more than ten (10) Business 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:
- (i) that the sum requested either (A) has been paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner); or (B) is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said Persons in respect thereof and the amount of any retentions, and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics' Lien Act and any title insurer affording coverage against mechanics' liens;
 - (ii) 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;
 - (iii) that no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds;
 - (iv) other information which may from time to time be required by any Mortgagees which is customarily required by mortgagees of comparable buildings, or as may be agreed to by the Owners.
- (b) The Depositary shall, out of the monies so held by the Depositary, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other Persons named in the architect's certificate and contractors'

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and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them upon:

- (i) compliance with the provisions of Section 17.1(a); and
 - (ii) 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
 - (iii) approval by the title insurer, the Owners of the affected portion of the Building and their Mortgagees (to the extent provided in their respective Mortgages) of the lien waivers and other documentation, and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and such Mortgagees) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the liens in favor of such Mortgagees.
- (c) Any Owner or Mortgagee or the Depository may require that disbursements be made through the customary form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration.
 - (d) 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; Joint Direction by Owners.

- (a) No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owners of the affected portion of the Building to which such sums relate and any Mortgagee thereof, shall have any interest in or right to or lien upon any funds held by the Depository.
- (b) The Owners of the affected portion of the Building to which such sums relate (with the consent of such Owners' Mortgagees to the extent required in their respective Mortgages) may jointly at any time provide in writing for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialmen, engineer, architect or any other person whatsoever.
- (c) If at any time the Owners of the affected portion of the Building to which such sums relate (with the consent of such Owners' Mortgagees to the extent required in their respective Mortgages) shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the

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Depository shall disburse such funds in accordance with said instructions, and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

ARTICLE 18

ARCHITECT

18.1 Appointment of Architect.

- (a) When and if required by the provisions of this Declaration, the Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers to act jointly hereunder or a firm of architects which has retained a firm of engineers) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "**Architect**").
- (b) The Architect shall, upon its appointment, execute an agreement with the Owners in the form required by such Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then-serving Architect to be replaced without cause and without penalty or fee upon thirty (30) days' prior written notice. The Owners acting jointly may replace the Architect for any reason.
- (c) Unless and until such time as the Owners jointly replace the Architect, the Architect shall be Solomon Cordwell Buenz, 625 N. Michigan Avenue, Suite 800, Chicago, Illinois 60611.
- (d) Any Owner also may cause any Architect be replaced and the other Owner shall consent to such replacement, if the Owner causing the Architect to be replaced demonstrates to the other Owner that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently.
- (e) If all 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 ways in which such Architect shall have failed to perform fairly, diligently or competently.
- (f) 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 other Owner of its objection in writing within ten (10) Business Days after receipt of such notice from the requesting Owner. If, within ten (10) Business Days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the

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arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether an Owner or Mortgagee is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners.

18.2 Architect's Fees.

- (a) 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.
- (b) In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of a Building or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services.
- (c) If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) Business Days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) Business Days after written demand for reimbursement, reimburse the other Owner for any such payment.

ARTICLE 19

NOTICES AND APPROVALS

19.1 Notice to Parties.

- (a) 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 the other Owners shall be in writing and shall be given or made to a party at the following address or at such other addresses as the parties may designate from time to time by notice given in accordance with the terms hereof:
 - (i) If to Residential Owner:

Elm State Property LLC
 c/o Convexity Management LLC
 540 West Madison Street
 Suite 2500
 Chicago, Illinois 60661

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Attention: David Nelson

with a copy to: Convexity Management LLC
540 West Madison Street
Suite 2500
Chicago, Illinois 60661
Attention: Jeremy Kerman

with a copy to: Perkins Coie LLP
131 S. Dearborn St., Suite 1700
Chicago, Illinois 60603
Attention: Nathan F. Fahrer

(ii) If to Retail Owner:

Elm State Property LLC
c/o Convexity Management LLC
540 West Madison Street
Chicago, Illinois 60661
Attention: David Nelson

with a copy to: Convexity Management LLC
540 West Madison Street
Suite 2500
Chicago, Illinois 60661
Attention: Jeremy Kerman

with a copy to: Perkins Coie LLP
131 S. Dearborn St., Suite 1700
Chicago, Illinois 60603
Attention: Nathan F. Fahrer

(iii) and to any Mortgagee or Mezzanine Lender entitled to receive notices pursuant to the provisions of Section 20.10(b) hereof.

(b) Notices shall be given by registered or certified United States mail, return receipt requested, or by recognized overnight delivery service, and shall be deemed given two (2) Business Days after deposit with the United States mail, and one (1) Business Day after deposit with such overnight delivery service, as applicable.

(c) Any Owner may designate a different address from time to time, provided, however, it has given at least ten (10) Business Days' advance notice of such

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change of address. Failure to give notice to any Owner's or Mortgagee's counsel whom such Owner or Mortgagee has requested that copies be delivered 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 department or agency having jurisdiction over City 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.

- (a) Other than as set forth in Section 19.3, if at any time the interest or estate of an 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:
- (i) designate one Person to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners; and
 - (ii) designate one Person having an address in the State of Illinois 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 (it being agreed that in no event shall owners in a condominium be deemed to constitute "multiple owners" hereunder).
- (b) Thereafter, until such designation is revoked by written notice given by all of the 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.
- (c) 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

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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.

19.3 Condominium Association Acting for Unit Owners.

- (a) Upon submission of either Property to the Act, all rights, approvals, Easements and benefits under this Declaration appurtenant to or enjoyed by such Property shall be exercised by the Condominium Association on behalf of the Unit Owners of such Property except for Easements which by their nature are usable by Unit Owners individually and do not involve Maintenance.
- (b) Any action to enforce rights, approvals, obligations, Easements, burdens and benefits under this Declaration on behalf of the Unit Owners or the Condominium Association shall be taken on behalf of all Unit Owners and the Condominium Association solely by the 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.
- (c) All obligations under this Declaration of such Owner of a Property submitting to the Act shall be the obligations jointly and severally of both the Condominium Association and the Unit Owners collectively so long as such Property is subject to the Act; provided, however, that no individual Unit Owner (or the holder of any mortgage on such Unit Owner's Unit) shall be liable for any obligation of such Owner in excess of a percentage of such liability equal to the percentage interest in the common elements 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 9** and **Article 10**.
- (d) 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.
- (e) 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.
- (f) Notices under Section 19.1 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.

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- (g) All such Unit Owners hereby designate the Condominium Association or other applicable governing body of such condominium as its true and lawful attorney in fact, coupled with an interest, for purposes of exercising its rights hereunder as Owner of any portion of the Property.

ARTICLE 20

GENERAL

- 20.1 Cooperation of Owners. In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with each other Owner to promote the efficient operation of each respective portion of the Building and the harmonious relationship among 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 date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as another 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 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.
- (a) Except as otherwise provided in this Declaration, this Declaration may be amended or terminated only by an instrument signed by Retail Owner and Residential Owner.
 - (b) Any amendment to or termination of this Declaration shall be recorded with the Recorder.
- 20.5 Perpetuities and Other Invalidity.
- (a) 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

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against perpetuities or other statutory or common Law rule) prescribes a shorter period, then upon expiration of such period).

- (b) 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.
- (c) 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 statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other similar statutory or common Law rules, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Rahm Emanuel, Mayor of the City.

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 to the Recorder for filing. 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.

20.8 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 under any Laws or otherwise, except Mortgagees.

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

20.10 Notice to Mortgagees; Rights of Mortgagee.

- (a) The term "**Mortgage**" as used herein means any mortgage of an interest in the Property given primarily to secure the repayment of money owed by the mortgagor (together with any related loan agreement or other documents executed and delivered in connection therewith). The term "**Mortgagee**" as used herein means the Mortgagee from time to time under any such Mortgage;
- (b) (i) Each 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

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notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee so long as such Mortgagee:

(A) shall have served on the Owners, by personal delivery or by registered or certified mail return receipt requested or by overnight courier (subject to Article 19), a written notice specifying the name and address of such Mortgagee; or

(B) entered into a consent and subordination concurrently with the execution of this Declaration, in which event the address of such Mortgagee shall be as set forth in such consent and subordination.

(ii) After receipt of such notice from a Mortgagee pursuant to Section 20.10(b)(i)(A) or delivery by a Mortgagee of a Consent and Subordination pursuant to Section 20.10(b)(i)(B), 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.

(c) If a Mortgagee so provides or otherwise requires, and such Mortgagee is entitled to notice pursuant to the provisions of Section 20.10(b):

(i) the proceeds of any claim under an insurance policy or Award required to be delivered to an Owner shall, upon notice from a Mortgagee, be delivered to the Depository to be disbursed by the Depository in accordance with the provisions of this Declaration and any excess over the cost of repair and restoration of the proceeds of any claim under an insurance policy or Award in respect of the Property owned by its borrower shall be paid to the applicable Mortgagee to the extent provided under the applicable Mortgage.

(ii) 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.

(iii) No termination or material amendment or material modification of this Declaration shall be effective without the prior written consent of each Mortgagee (to the extent required in the respective Mortgages), which consent shall not be unreasonably withheld, conditioned or delayed and solely to the extent that such consent is required pursuant to the provisions of the applicable Mortgage.

(iv) No Owner may elect to not restore a Building pursuant to Article 9 without first obtaining the prior written consent of its Mortgagee, if any; provided, that to the extent that an Owner is required to restore a Building

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pursuant to **Article 9**, then the consent of any such Mortgagee shall not be required with respect to such restoration.

- (v) Should an Owner fail to provide and maintain any policy of insurance required under **Article 8** or pay its share of the premiums or other costs for any joint policies, then any Mortgagee may purchase such policy and pay the costs thereof (or such Owner's share of such costs for any joint policy).
- (d) 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 encumbered by the Mortgagee's Mortgage within any applicable cure period provided for such breach by such Mortgage Owner. If a Mortgagee has served the notice described in **Section 20.10(b)**, then the Mortgagee shall have an additional period of twenty (20) days after notice to the Mortgagee of expiration of the cure period allowed the mortgagor Owner before the other Owner may 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.
- (e) 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 Owner whose Property is not subject to the Mortgage of such Mortgagee and will not 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 reasonably acceptable to such non-mortgaging Owner and deliver the same to the requesting Owner within ten (10) Business Days following requests therefor by the requesting Owner or prospective Mortgagee. The requesting Owner shall pay all reasonable out-of-pocket expenses, including reasonable attorney's fees incurred by the other Owner as a result of such requested amendments.
- (f) Notwithstanding the foregoing, any lender not secured by a Mortgage against a portion of the Property (a "**Mezzanine Lender**") that provides to each of the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mezzanine Lender, such Mezzanine Lender 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 others, at the address last furnished by such Mezzanine Lender (including copies of any notice any Mortgagee is entitled to receive under this Declaration requesting consent of such Mortgagee pursuant to and in accordance with the terms and conditions of this Declaration) and to exercise the rights and remedies set forth in this **Section 20.10**.

20.11 **Coordination with Occupants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall coordinate all requests and

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contacts between Occupants 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 Owner liable either to such Occupants or the other Owner for acts of such Occupants or other Owner.

- 20.12 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 Mechanics Lien Act against, or with respect to the Property or improvements owned by any other Owner or any part thereof, or with respect to the estate or interest of any person whatsoever in the Property or improvements owned by any 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 5 or Article 6 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 any Owner under the Mechanics' Lien Act with respect to that portion of the Property or improvements owned by any other Owner, except as set forth above with regard to Article 5 or Article 6 of this Declaration. The provisions of this Section 20.12 are not intended to waive any lien created under Article 10.
- 20.13 Binding Effect. The Easements, covenants and restrictions created under this Declaration 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.
- 20.14 Landmark Designation. No Owner or Occupant shall seek, take any action or permit any third party to seek or take any action relating to or in connection with obtaining any historical or landmark designation or status for any portion of the Building or the Property without the prior written consent of all Owners, which consent may be withheld in the sole and absolute discretion of any one or more Owner. It is the intent of each of the Owners, for itself and all future Owners and Occupants of the Building and Property, that the Building and Property remain free from any use or development restrictions which could be imposed as a result of any such historical or landmark designation or status or any other comparable designation or status.
- 20.15 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 ventures 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.

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

20.17 Declaration Shall Continue Notwithstanding Breach.

- (a) 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 made in good faith and for value as to any part of the Property.
- (b) 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.

ARTICLE 21

LIMITATION OF LIABILITY

21.1 Limitation of Liability.

- (a) The liability under this Declaration of an Owner shall be limited to and enforceable solely against the assets of such Owner 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.
- (b) 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. 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.
- (c) 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

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enforceable against it or any of the beneficiaries under said trust agreement 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), 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 shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property; and
- (b) the Person who succeeds to 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; provided, however, that (i) nothing in this Section 21.2 shall affect the validity or priority of any Prior Lien encumbering the Property of such Owner, and (ii) if a portion of the Property is transferred to a successor Owner as a result of a foreclosure of a Mortgage or a deed in lieu of foreclosure, such successor Owner shall not be liable for any acts or omissions of a prior Owner, except that such successor Owner shall be required to cure all defaults of the prior Owner under this Declaration of a continuing nature regardless of when such default first arose.

[No further text on this page; signatures on following pages]

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

DECLARANT:

ELM STATE PROPERTY LLC,
a Delaware limited liability company

By: **CONVEXITY MANAGEMENT LLC,**
a Delaware limited liability company, its manager

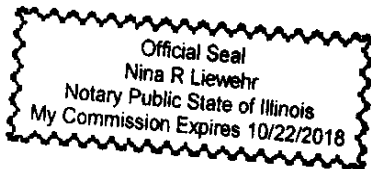
By: [Signature]
Name: DAVID B. NELSON
Title: VP

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, Nina R Liewehr a Notary Public in and for the County and State aforesaid, do hereby certify that DAVID B NELSON as NO of **CONVEXITY MANAGEMENT LLC**, a Delaware limited liability company, the manager of **ELM STATE PROPERTY LLC**, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized signatory, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 8 day of MARCH, 2010.

[Signature]
Notary Public



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CONSENT OF MORTGAGEE

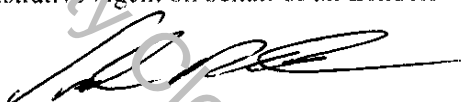
BMO Harris Bank N.A., a national banking association, as holder of a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated April 29, 2015 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on May 1, 2015 as document number 1512118073, as Lender and as Administrative Agent on behalf of all Lenders (the "Mortgage"), hereby consents to the execution and recording of the within Declaration of Reciprocal Easements and Operating Covenants and agrees that said Mortgage is subject and subordinate thereto. The address of the undersigned is:

115 S. LaSalle St., 20W
Chicago, Illinois 60603

This Consent is intended to, and shall be deemed to constitute a notice from the undersigned to the Owners for purposes of Section 20.10(b) hereinabove entitling undersigned to receive copies of all notices from each Owner to any Owner.

IN WITNESS WHEREOF, BMO Harris Bank N.A., a national banking association, as a Lender and as Administrative Agent on behalf of all Lenders, has caused this Consent of Mortgagee to be signed by its duly authorized officer on its behalf; all done at Chicago, Illinois on this ____ day of March, 2016.

BMO HARRIS BANK N.A.,
a national banking association, as a Lender and as
Administrative Agent on behalf of all Lenders

By: 
Name: Todd Ruxton
Title: Vice President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Tasha R. Underwood Notary Public in and for said County and State, DO HEREBY CERTIFY that Todd Ruxton as Vice President of **BMO HARRIS BANK N.A.**, a national banking association, as a Lender and as Administrative Agent on behalf of all Lenders, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9 day of March, 2016.


Notary Public



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EXHIBIT A

RETAIL PARCEL 1

THAT PART OF BLOCK 1 IN CANAL TRUSTEES' SUBDIVISION OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +26.54 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.67 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF EAST ELM STREET WITH THE EAST LINE OF NORTH STATE STREET; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 14.03 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 105.43 FEET; THENCE NORTH 89°51'56" EAST 56.29 FEET; THENCE SOUTH 00°00'00" WEST 9.26 FEET; THENCE NORTH 90°00'00" WEST 10.72 FEET; THENCE SOUTH 00°00'00" WEST 4.95 FEET; THENCE NORTH 90°00'00" WEST 3.45 FEET; THENCE SOUTH 00°00'00" WEST 5.44 FEET; THENCE SOUTH 90°00'00" EAST 3.50 FEET; THENCE SOUTH 00°00'00" WEST 14.11 FEET; THENCE NORTH 90°00'00" WEST 8.51 FEET; THENCE SOUTH 00°00'00" WEST 52.80 FEET; THENCE SOUTH 90°00'00" EAST 8.62 FEET; THENCE SOUTH 00°00'00" WEST 7.08 FEET; THENCE NORTH 90°00'00" WEST 1.94 FEET; THENCE SOUTH 00°00'00" WEST 25.79 FEET TO THE NORTH LINE OF EAST ELM STREET; THENCE SOUTH 89°46'18" WEST ALONG THE NORTH LINE OF EAST ELM STREET 28.55 FEET; THENCE NORTH 00°00'19" WEST 13.97 FEET; THENCE NORTH 90°00'00" WEST 15.24 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

RETAIL PARCEL 2

THAT PART OF BLOCK 1 IN CANAL TRUSTEES' SUBDIVISION OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +65.33 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.67 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF EAST ELM STREET WITH THE EAST LINE OF NORTH STATE STREET; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 14.03 FEET; THENCE SOUTH 90°00'00" EAST 15.24 FEET; THENCE SOUTH 00°00'19" EAST 13.97 FEET TO THE NORTH LINE OF EAST ELM STREET; THENCE SOUTH 89°46'18" WEST ALONG THE NORTH LINE OF EAST ELM STREET 15.24 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

RESIDENTIAL PARCEL

THAT PART OF BLOCK 1 IN CANAL TRUSTEES' SUBDIVISION OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: **BEGINNING** AT THE INTERSECTION OF THE NORTH LINE OF EAST ELM STREET WITH THE EAST LINE OF NORTH STATE STREET; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 119.46 FEET; THENCE NORTH 89°51'56" EAST 95.00 FEET TO THE WEST LINE OF A 16 FOOT EAST-WEST PUBLIC ALLEY; THENCE SOUTH 00°06'26" WEST ALONG THE WEST LINE OF A 16 FOOT EAST-WEST PUBLIC ALLEY 16.00 FEET TO THE SOUTH LINE THEREOF; THENCE NORTH 89°51'56" EAST ALONG THE SOUTH LINE OF SAID ALLEY 5.00 FEET TO THE CENTER LINE OF A 10 FOOT PRIVATE ALLEY; THENCE SOUTH 00°04'58" EAST ALONG SAID CENTER LINE 103.30 FEET TO THE NORTH LINE OF EAST ELM STREET; THENCE SOUTH 89°46'18" WEST ALONG THE NORTH LINE OF EAST ELM STREET 100.12 FEET TO THE POINT OF BEGINNING,

*(EXCEPT THAT PART OF BLOCK 1 IN CANAL TRUSTEES' SUBDIVISION OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +26.54 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.67 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF EAST ELM STREET WITH THE EAST LINE OF NORTH STATE STREET; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 14.03 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 105.43 FEET; THENCE NORTH 89°51'56" EAST 56.29 FEET; THENCE SOUTH 00°00'00" WEST 9.26 FEET; THENCE NORTH 90°00'00" WEST 10.72 FEET; THENCE SOUTH 00°00'00" WEST 4.95 FEET; THENCE NORTH 90°00'00" WEST 3.45 FEET; THENCE SOUTH 00°00'00" WEST 5.44 FEET; THENCE SOUTH 90°00'00" EAST 3.50 FEET; THENCE SOUTH 00°00'00" WEST 14.11 FEET; THENCE NORTH 90°00'00" WEST 8.51 FEET; THENCE SOUTH 00°00'00" WEST 52.80 FEET; THENCE SOUTH 90°00'00" EAST 8.62 FEET; THENCE SOUTH 00°00'00" WEST 7.08 FEET; THENCE NORTH 90°00'00" WEST 1.94 FEET; THENCE SOUTH 00°00'00" WEST 25.79 FEET TO THE NORTH LINE OF EAST ELM STREET; THENCE SOUTH 89°46'18" WEST ALONG THE NORTH LINE OF EAST ELM STREET 28.55 FEET; THENCE NORTH 00°00'19" WEST 13.97 FEET; THENCE NORTH 90°00'00" WEST 15.24 FEET TO THE POINT OF BEGINNING;*

ALSO EXCEPT THAT PART OF BLOCK 1 IN CANAL TRUSTEES' SUBDIVISION OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE

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HAVING AN ELEVATION OF +65.33 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.67 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: **BEGINNING** AT THE INTERSECTION OF THE NORTH LINE OF EAST ELM STREET WITH THE EAST LINE OF NORTH STATE STREET; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF NORTH STATE STREET 14.03 FEET; THENCE SOUTH 90°00'00" EAST 15.24 FEET; THENCE SOUTH 00°00'19" EAST 13.97 FEET TO THE NORTH LINE OF EAST ELM STREET; THENCE SOUTH 89°46'18" WEST ALONG THE NORTH LINE OF EAST ELM STREET 15.24 FEET TO THE POINT OF BEGINNING).

IN COOK COUNTY, ILLINOIS.



Property of Cook County Clerk's Office

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EXHIBIT C

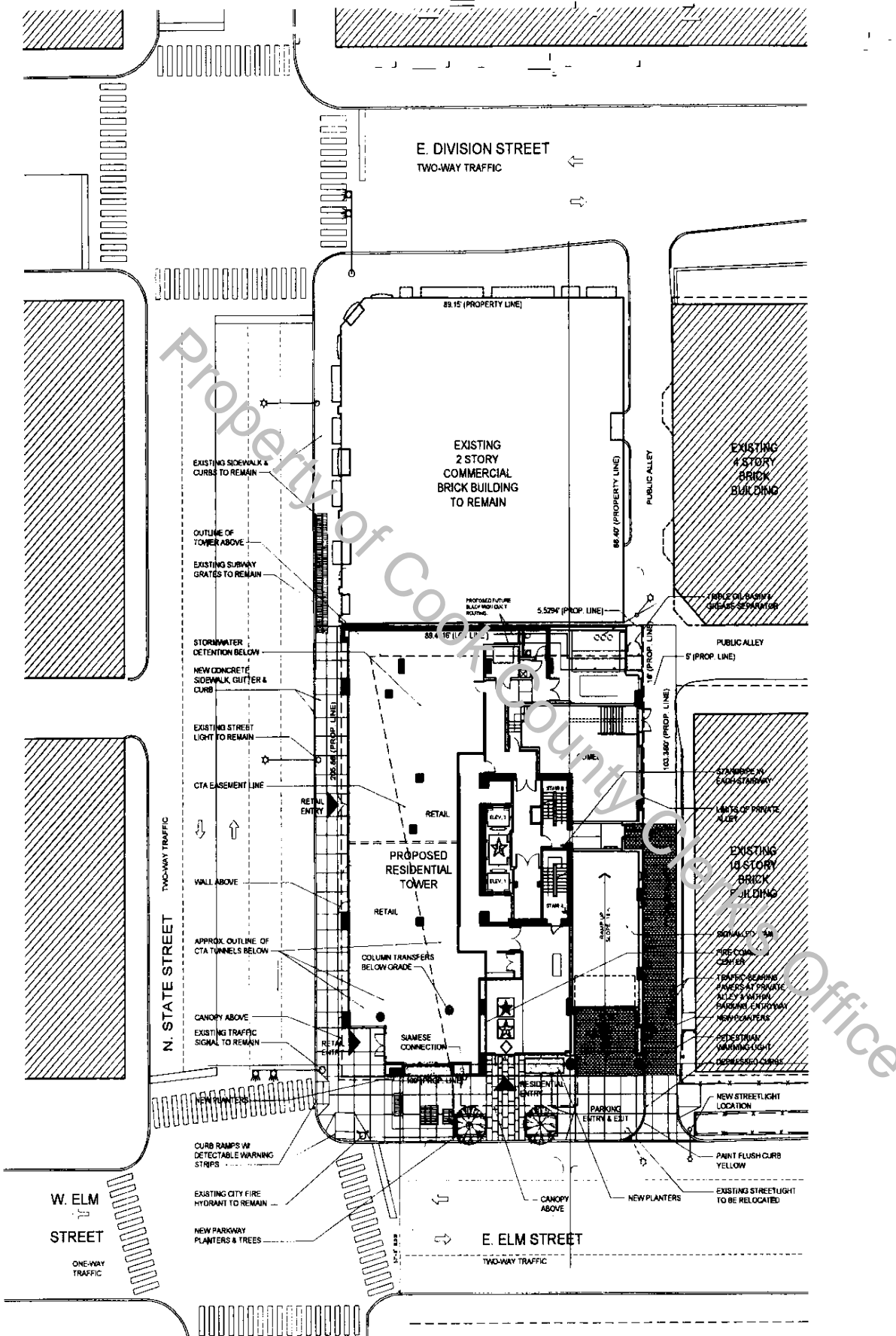
PLANS

[See the attached]



Property of Cook County Clerk's Office

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Solomon Cordwell
Burns
 Architects Planners Interior Designers

LEGEND

- FIRE DEPT ACCESS
- APPROXIMATE LOCATION OF FIRE COMMAND CENTER
- FIREMAN'S ELEVATOR
- BUILDING EXIT
- FIRE HYDRANT
- APPROXIMATE LOCATION OF SIAMSEF CONNECTION

0'-0" = 15.25 C.C.D.

NO.	DATE	DESCRIPTION
01	07.23.2010	DATE REVIEW
02	08.24.2010	PROJECT MEET
03	09.02.2010	FOUNDATION PERMIT
04	09.29.2010	TOWER WINDOW WALL BID
05	10.21.2010	DECKING DEVELOPMENT
06	10.28.2010	DECKING DEVELOPMENT
07	10.28.2010	SCHEMATIC DEVELOPMENT
08	11.25.2010	DEVELOPMENT

ELM & STATE RESIDENTIAL

4 E. ELM STREET
 CHICAGO, IL

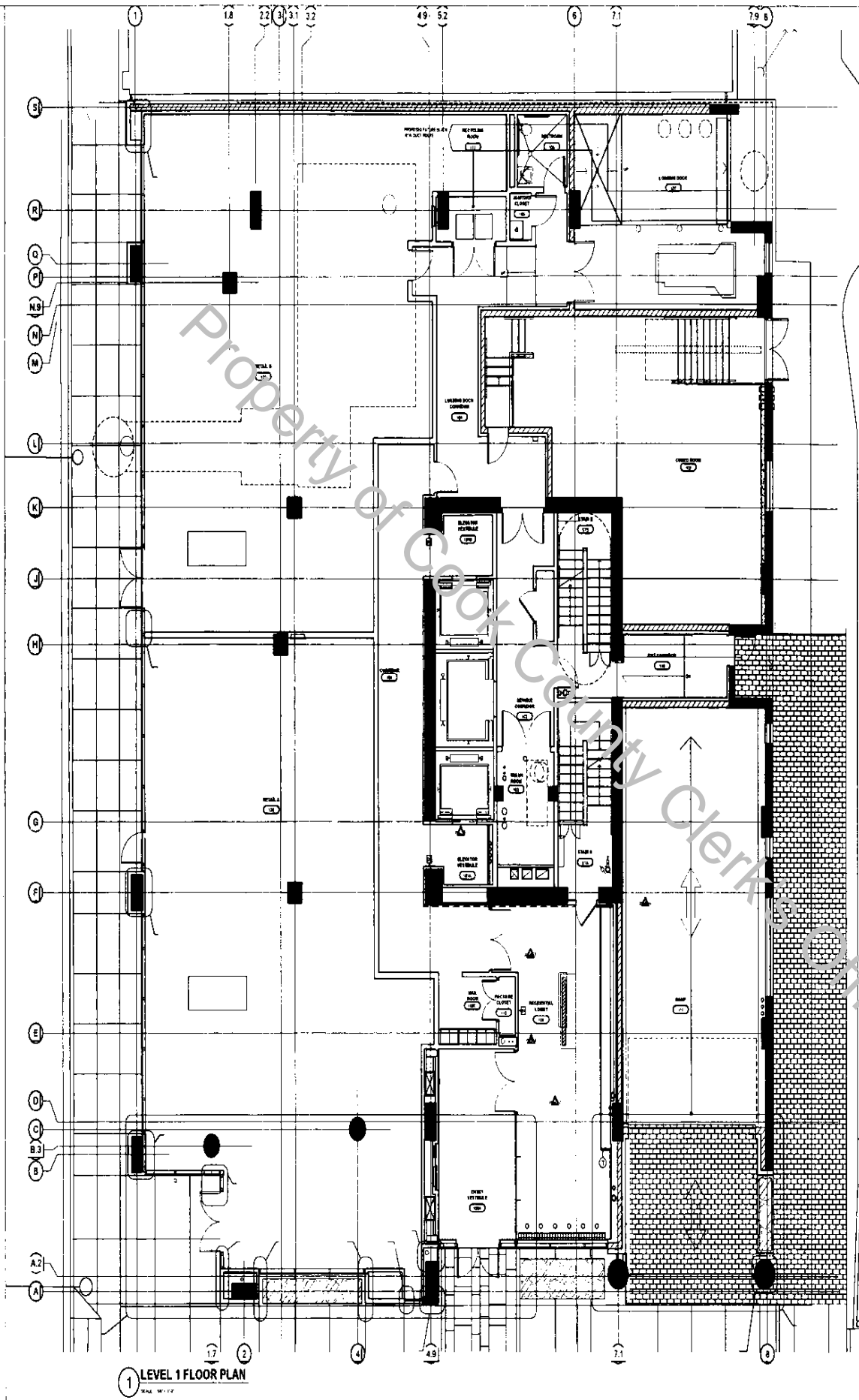
SITE PLAN

Drawn By: KL
 Checked By:
 Project Number: 2013020

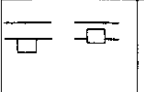
Sheet Number: A1.01

SITE PLAN
 SCALE: 1/8" = 1'-0"

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1 LEVEL 1 FLOOR PLAN
SCALE: 3/8\"/>



3/8" = 15.25 C.C.D.	
NO.	DESCRIPTION

**ELM & STATE
RESIDENTIAL**

4 E ELM STREET CHICAGO, IL

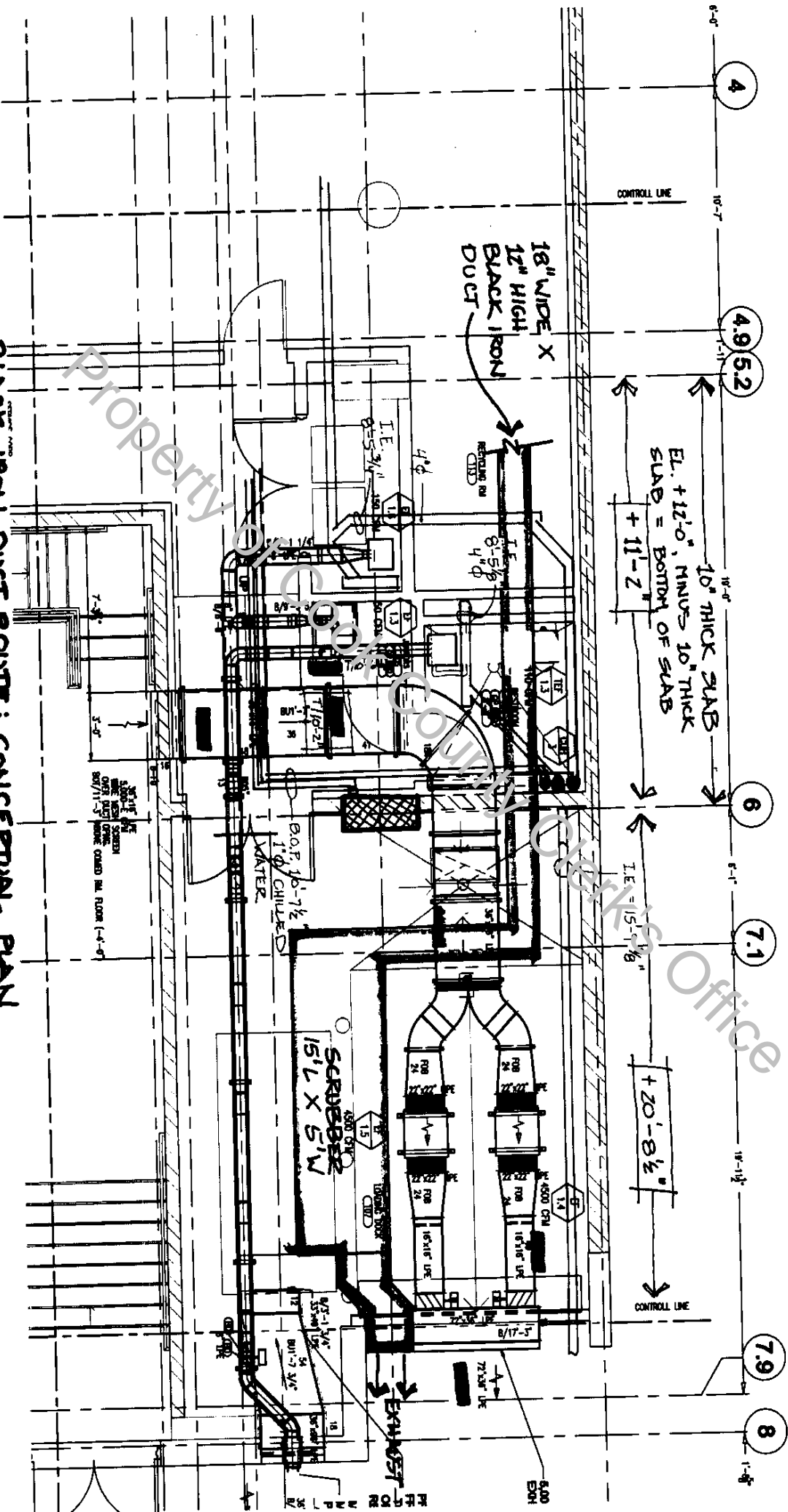
**LEVEL 1 FLOOR
PLAN**

Drawn By: SM
Checked By: RM
Project Number: 2013020

Sheet Number: **A2.01**

UNOFFICIAL COPY

A BACK IRON DUCT ROUTE: CONCEPTUAL PLAN
 SCALE: 1/4" = 1'-0"
 06/14/2015



Property of [Faded]

Office [Faded]