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208 SOUTH LASALLE, CHICAGO, ILLINOIS

## AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT

### PIN NUMBERS:

#### Hotel Parcel:

17-16-220-003-0000  
17-16-220-004-0000  
17-16-220-005-0000  
17-16-220-006-0000  
17-16-220-007-0000  
17-16-220-008-0000

#### Office Parcel/Retail Parcel/NH Parcel

17-16-220-009-0000  
17-16-220-010-0000  
17-16-220-011-0000  
17-16-220-012-0000  
17-16-220-013-0000  
17-16-220-014-0000  
17-16-220-015-0000

### PROPERTY ADDRESS:

208 South LaSalle Street  
Chicago, Illinois 60604

*Box 400*

*\* THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT  
AN ERROR IN THE LEGAL DESCRIPTION.*

*PH*

*8578732 / 8578733 20F 6  
8457376 / 8963435 / 8963436 / 8962061 30F 20  
CW*

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Proprietor of Cook County Clerk's Office

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**LIST OF EXHIBITS TO  
208 SOUTH LASALLE STREET, CHICAGO, ILLINOIS  
AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING  
AGREEMENT**

<b><u>EXHIBIT LETTER OR NUMBER</u></b>	<b><u>TITLE OR DESCRIPTION</u></b>
B-1	Legal Description of the Hotel Parcel
B-2	Legal Description of the Office Parcel
B-3	Legal Description of the Retail Parcel
B-4	Legal Description of the NH Parcel
C	Additional Permitted Encroachments
5.2(i)	Roof Top Communications Facilities
7.1(a)	Wastewater/Sanitary Sewer
7.1(b)	Stormwater Drainage Facilities
7.1(c)	Fire Pump, Combination Standpipe System and Life Safety System
7.1(d)	Maintenance of Shared Spaces
7.1(e)	Emergency Generator
7.1(f)	Loading Facilities
7.1(g)	Adams Street Exterior Lighting and Loading Dock Exterior Lighting
7.1(h)	Exterior Window Washing
7.1(i)	Maintenance of Sidewalks and Snow Removal
7.1(j)	Facade and Window Maintenance
7.1(k)	Shared Freight Elevator Maintenance
7.1(l)	Domestic (City) Water
7.1(m)	Chilled Water
7.1(n)	Boiler System
7.2(a)(ii)	Roof Maintenance
7.3(a)(iii)	LaSalle Street Exterior Lighting
7.8	Billing and Payment
18.1	Depositary Agreement
Schedule 1	Lucien LaGrange Drawing List Dated October 12, 2007
Consent of Hotel Manager	

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208 SOUTH LA SALLE STREET  
CHICAGO, ILLINOIS

**AMENDED AND RESTATED**  
**RECIPROCAL EASEMENT AND OPERATING AGREEMENT**

THIS AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 2nd day of July, 2014, by UST Prime III Office Owner, LLC, a Delaware limited liability company ("Office/Retail Owner"), UST Prime III Hotel Owner, L.P., a Delaware limited partnership ("Hotel Owner"), and RCP Hotel Owner, LLC, a Delaware limited liability company ("NH Owner").

**RECITALS:**

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

B. Reference is made to that certain Reciprocal Easement and Operating Agreement dated as of March 5, 2008 (the "Original REA"), between Office/Retail Owner (as successor in interest to Office UST Prime III Office Owner, L.P., an Illinois limited partnership) and Hotel Owner (as successor in interest to UST Prime III Hotel Owner, L.P., an Illinois limited partnership), which was recorded with the Office of the Recorder of Deeds, Cook County, Illinois on March 6, 2008 as Document No. 0806641192 against (i) that certain real property legally described in Exhibit B-1 attached hereto (the "Hotel Parcel"), (ii) that certain real property legally described in Exhibit B-2 of the Original REA (the "Original Office Parcel") and (iii) that certain real property and legally described in Exhibit B-3 of the Original REA (the "Original Retail Parcel").

C. Hotel Owner is the owner of the Hotel Parcel.

D. Prior to the Effective Date, the Office/Retail Owner was the owner of the Original Office Parcel and the Original Retail Parcel.

E. Subsequent to the recordation of the Original REA, (i) Hotel Owner developed a hotel project (the "Hotel Project") on the Hotel Parcel; and (ii) Office/Retail Owner renovated (x) the office space in the Original Office Parcel (the "Office Project"); and (y) the retail space in the Retail Parcel (the "Retail Project").

F. As of the Effective Date, Office/Retail Owner has (i) conveyed to NH Owner a portion of the Original Office Parcel and the Original Retail Parcel, as legally described in Exhibit B-4 attached hereto (collectively, the "NH Parcel"), (ii) retained ownership of the remainder of the Original Office Parcel, which remainder is legally described in Exhibit B-2 attached hereto (the "Office Parcel"), and (iii) retained ownership of the remainder of the



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Original Retail Parcel, which remainder is legally described in Exhibit B-3 attached hereto (the "Retail Parcel").

G. NH Owner intends to redevelop the NH Parcel into a hotel (the "NH Project").

H. Since each Parcel will be functionally independent of the other Parcels and each will depend upon the other Parcels, to some extent, for one or more of structural support, enclosure, ingress and egress, and other facilities and components necessary to the efficient operation and intended use of the Parcels, the parties hereto intend to amend and restate the Original REA in its entirety to provide for the efficient operation of each respective portion, estate and interest in the Property, and to ensure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by providing for and creating certain easements, covenants, conditions and restrictions against and affecting the Parcels which will be binding upon each present and future respective Owner of such Parcels, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each other Owner.

**NOW, THEREFORE**, in consideration of the Recitals and the covenants contained herein, as of the Effective Date of this Agreement, Office/Retail Owner, Hotel Owner and NH Owner, intending to be legally bound, hereby agree to amend and restate the Original REA in its entirety as set forth herein, and 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 Agreement, and agree that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter, and be binding upon and inure, to the extent provided herein, to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land subjected to this Agreement.

## ARTICLE I

### DEFINITIONS

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

(a) "Affiliate" - Any Person controlling, under common control with or controlled by the Person in question. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or actions of a Person, whether through ownership of voting securities, by contract or otherwise.

(b) "Agreement" - As defined in the PREAMBLE to the Amended and Restated Reciprocal Easement and Operating Agreement.

(c) "Alterations" - As defined in Section 16.1(a).

(d) "Altering Owner" - As defined in Section 16.1(a).

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- (e) "Applicable Percentage" - As defined in Paragraph 8 of Exhibit 7.8.
- (f) "Approved Division" - The division of any costs, expenses or other monetary obligation under this Agreement as among the Owners pursuant to this Agreement in the following percentages, which percentages shall be based upon the square footage of each Owner's respective Parcel, divided by the total square footage for all of the Parcels, collectively (i.e., 1,235,754 sf): (i) Hotel Owner: 54.32% (i.e., 671,214 sf/1,235,754 sf); (ii) Office Owner: 21.95% (i.e., 271,220 sf/1,235,754 sf); (iii) Retail Owner: 0.82% (i.e., 10,216 sf/1,235,754 sf); and (iv) NH Owner: 22.91% (i.e., 283,104 sf/1,235,754 sf).
- (g) "Arbitrable Dispute" - As defined in Section 13.1 hereof.
- (h) "Arbitration Cap" - As defined in Section 13.1.
- (i) "Architect" - As defined in Section 20.1(a).
- (j) "Assessor" - As defined in Section 9.1.
- (k) "Award" - As defined in Section 15.1.
- (l) "Building" - The building and related Improvements located on the Parcels, along with any additions or alterations thereto or replacements thereof.
- (m) "City" - The City of Chicago, Illinois, a municipal corporation.
- (n) "Common Walls, Floors And Ceilings" - All common structural and partition walls, columns, floors and ceilings situated on or adjoining two Parcels, or located on one Parcel but forming the walls, columns, floors or ceilings of an adjoining Parcel. Each Owner shall be deemed to own the floor/ceiling slab constituting a Common Floor and Ceiling located above such Owner's Parcel and located beneath an adjacent Parcel, and such adjacent Parcel Owner shall have the right to use such Common Floor. Other than as set forth in this Agreement, the Owner of any Common Floor and Ceiling shall be solely responsible for all Maintenance in connection with the same, at such Owner's sole expense. Any Common Wall located between two Parcels shall be deemed to be a "party wall", owned 50%/50% by each adjoining Owner. Other than as set forth in this Agreement, the Maintenance of such Common Walls shall be the joint responsibility of such adjoining Owners, with each such Owner to pay 50% of the cost of such Maintenance.
- (o) "Communications Facilities" - As defined in Exhibit 5.2(i).
- (p) "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of

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Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

(q) "Contributing Party" - As defined in Paragraph 1(a) of Exhibit 7.8.

(r) "Creditor Owner" - An Owner (i) to whom payment of money or other duty or obligation is owed under this Agreement by another Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Agreement or (ii) who has exercised any self-help remedy provided for in this Agreement. An Owner may be a Creditor Owner notwithstanding that the term "Creditor Owner" is not specifically stated in a particular provision of this Agreement.

(s) "Default Amount" - As defined in Section 12.1(b).

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

(u) "Depository" - The person or entity, from time to time acting pursuant to Article 18.

(v) "Easements" - All easements declared, granted or created pursuant to the terms and provisions of this Agreement.

(w) "Effective Date" - The date specified in the PREAMBLE on Page 1 of this Agreement.

(x) "Emergency Situation" - A situation (i) impairing or imminently likely to impair structural support of any Parcel or any Improvements constructed thereon; (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to any of the Improvements constructed on any portion of the Property, or any property in, on, under, within, upon or about the Property; (iii) causing or imminently likely to cause substantial economic loss to an Owner, directly or indirectly; or (iv) substantially disrupting or imminently likely to substantially disrupt business operations in any Parcel. The issuance of a building, health, fire or other code or Law compliance violation may constitute an Emergency Situation if one or more of the foregoing criteria are met by reason thereof. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

(y) "Estoppel Certificate" - As defined in Section 17.1.

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(z) "**Façade**" – The Hotel Façade, Office Façade, Retail Façade and the NH Façade, collectively.

(aa) "**Facilities**" - Any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers, closets (for facilities and risers) coils, computers, conduits, controls, control centers, condensers, cooling towers, couplers, devices, ducts, enunciator panels, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fire control panels, fixtures, generators, hangers, heat traces, indicators, junctions, lines, life safety systems, light fixtures, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, sprinklers, starters, steam heating systems (including hot water supply and return risers), switches, switchboards, systems, tanks, telecommunication equipment, transformers, vacuum pipe valves, wiring, and the like used in providing services from time to time in any part of a Parcel, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, storm water drainage, telephone, television, transportation, ventilation and water service, and any replacements of or additions to any of the items described in this paragraph. A reference to "Facilities" shall be deemed to include a reference to the Owned Facilities.

(bb) "**Federal Reserve Agreement**" - As defined in Section 2.2(d).

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

(dd) "**Hotel Communications Facilities**" – As defined in **Exhibit 5.2(i)**.

(ee) "**Hotel Façade**" - The exterior walls of the Hotel Parcel Improvements, from the street level up to and including the 12th Floor of the Building, consisting of the glass, granite, terra cotta, limestone and other facing materials, colonnades

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covering or attached to the concrete or steel structural supports forming the curtain wall of the Building, window frames, window systems, joints and seals, but excluding (i) the Retail Façade, (ii) the Office Façade, (iii) the NH Façade, and (iv) the structural supports for the exterior wall of the Building. The Hotel Façade shall exclude the first floor Façade from the street level to the floor of the second level where the Façade is the exterior wall of the Retail Parcel, Office Parcel or the NH Parcel and for the avoidance of doubt, shall exclude the flagpoles above the LaSalle Street entrance which are part of the NH Parcel.

(ff) "Hotel Owned Facilities" - Facilities owned by Hotel Owner and now located (or which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located) in the Office Parcel, the Retail Parcel or NH Parcel.

(gg) "Hotel Owner" - The Owner, from time to time, of the Hotel Parcel.

(hh) "Hotel Parcel" - As defined in Recital B above.

(ii) "Hotel Parcel Appraisal" - As defined in Section 11.5.

(jj) "Hotel Parcel Improvements" - All improvements constructed upon and within the Hotel Parcel and not constituting Office Owned Facilities, Retail Owned Facilities or NH Owned Facilities.

(kk) "Hotel Parcel Shared Space" - As defined in Exhibit 7.1(d).

(ll) "Hotel Project" - As defined in Recital D above.

(mm) "Hotel Property" - A collective reference to the Hotel Parcel, the Hotel Parcel Improvements and the Hotel Owned Facilities.

(nn) "Hotel Vaulted Roof" - The vaulted glass and steel ceiling and vaulted roof on the fifth (5th) floor of the Building.

(oo) "Impacted Owner" - As defined in Section 8.1(a).

(pp) "Improvements" - any or all, as the context may dictate, of the Hotel Parcel Improvements, the Office Parcel Improvements, the Retail Parcel Improvements or the NH Parcel Improvements.

(qq) "Indemnifying Owner" - As defined in Section 6.1.

(rr) "Indemnatee" - As defined in Section 6.1.

(ss) "Inspecting Owner" - As defined in Section 8.5.

(tt) "Land" - The Hotel Parcel, the Office Parcel, the Retail Parcel and the NH Parcel, collectively.

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(uu) "Law" or "Laws" - All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Property, or any parts thereof, including, but not limited to, the applicable requirements of (i) Title 16 of the United States Code, together with the United States Secretary of the Interior's Standards for the Treatment of Historic Properties (collectively, the "*Federal Historic Preservation Requirements*"), and (ii) the City's Landmarks Ordinance, together with the Rules and Regulations of the Commission on Chicago Landmarks (collectively, the "*Landmarks Ordinance Requirements*").

(vv) "Legal Process" - As defined in Section 21.2(a).

(ww) "Liening Owner" - As defined in Section 8.1(a).

(xx) "Loading Area" - The intended loading area outside of and immediately adjacent to the Building along vacated Quincy Street and Wells Street, as depicted on the Project Plans.

(yy) "Loading Dock" - The loading dock area and related Facilities serving the Building located in the southwest corner of the ground floor of the Building along vacated Quincy Court and Wells Street, as depicted on the Project Plans.

(zz) "Loading Facilities" - As defined in Section 2.2(d).

(aaa) "Maintenance", "Maintaining" or "Maintain" - Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, clearing, landscaping, painting, installation, restoration, reconstruction and replacement when necessary or desirable, including without limitation, services to be provided pursuant to Article 7.

(bbb) "Mandatory Cleaning" - As defined in Section 11.1(a)(ii).

(ccc) "Mechanics' Lien Act" - As defined in Section 16.4(a).

(ddd) "Mortgage" - As defined in Section 22.11(a).

(eee) "Mortgagee" - As defined in Section 16.4(a).

(fff) "Multiple Owners" - As defined in Section 21.2(a).

(ggg) "Net Capitalized Cost Of Replacement" - As defined in Paragraph 8 of Exhibit 7.8.

(hhh) "Net Salvage Value Of The Capital Item Being Replaced" - As defined in Paragraph 8 of Exhibit 7.8.

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(iii) "NH Communications Facilities" - As defined in Exhibit 5.2(i).

(jjj) "NH Façade" - The exterior walls of the NH Parcel Improvements (x) from the street level up to the lowest point of the Hotel Façade (including the exterior walls from the street level to the floor of the second level that encloses the NH Parcel), and (y) from the highest point of the Office Façade up to the Building roof, consisting of the glass, terra cotta, limestone and other facing materials, colonnades 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, window frames, window systems, joints and seals, but excluding (i) the Hotel Façade, (ii) the Retail Façade, (iii) the Office Façade, (iv) the Building roof and the roof structure, membrane, flashings and seals over the cornice; and (v) the structural supports for the exterior wall of the Building.

(kkk) "NH Owned Facilities" - Facilities owned by NH Owner and now located (or which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located) in the Hotel Parcel, the Retail Parcel, or the Office Parcel.

(lll) "NH Owner" - The Owner, from time to time, of the NH Parcel.

(mmm) "NH Parcel" - As defined in Recital F above.

(nnn) "NH Parcel Appraisal" - As defined in Section 11.5.

(ooo) "NH Parcel Improvements" - All improvements constructed upon and within the NH Parcel and not constituting Hotel Owned Facilities, Retail Owned Facilities or Office Owned Facilities.

(ppp) "NH Project" - As defined in Recital G above.

(qqq) "NH Property" - A collective reference to the NH Parcel, the NH Parcel Improvements and the NH Owned Facilities.

(rrr) "NH Shared Space" - As defined in Exhibit 7.1(d).

(sss) "Non-Performing Owner" - As defined in Section 14.4.

(ttt) "Notice" - As defined in Section 21.1(a).

(uuu) "Objecting Party" - As defined in Section 16.2(d).

(vvv) "Occupant" - Any Person (including, but not limited to, any hotel guest in the Hotel Parcel or the NH Parcel) from time to time entitled to the use and occupancy of any portion of any Parcel as an Owner or under any lease, sublease, license, concession or other similar agreement.

(www) "Office Communications Facilities" - As defined in Exhibit 5.2(i).

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(xxx) "Office Façade" - The exterior walls of the Office Parcel Improvements from the street level up to the lowest point of the Hotel Façade (and including the exterior walls on LaSalle Street and Wells Street from street level to the floor of the second level that encloses the Office Parcel), from the highest point of the Hotel Façade up to and including the 17th Floor of the Building, consisting of the glass, terra cotta, limestone and other facing materials, colonnades covering or attached to the concrete or steel structural supports forming the curtain wall of the Building, window frames, window systems, joints and seals, but excluding (i) the Hotel Façade, (ii) the Retail Façade, (iii) the NH Façade, and (iv) the structural supports for the exterior wall of the Building.

(yyy) "Office Owned Facilities" - Facilities owned by Office Owner and now located (or which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located) in the Hotel Parcel, the Retail Parcel or the NH Parcel.

(zzz) "Office Owner" - The Owner, from time to time, of the Office Parcel.

(aaaa) "Office Parcel" - As defined in Recital C above.

(bbbb) "Office Parcel Appraisal" - As defined in Section 11.5.

(cccc) "Office Parcel Improvements" - All improvements constructed upon and within the Office Parcel and not constituting Hotel Owned Facilities, Retail Owned Facilities or NH Owned Facilities.

(dddd) "Office Project" - As defined in Recital E above.

(eeee) "Office Property" - A collective reference to the Office Parcel, the Office Parcel Improvements and the Office Owned Facilities.

(ffff) "Office Shared Space" - As defined in Exhibit 7.1(d).

(gggg) "Operating Expenses" - As defined in Paragraph 8 of Exhibit 7.8.

(hhhh) "Owned Facilities" - A collective reference to the Hotel Owned Facilities, the Office Owned Facilities, the Retail Owned Facilities, and the NH Owned Facilities.

(iiii) "Owner(s)" - Hotel Owner and its successors and assigns, Office Owner and its successors and assigns, Retail Owner and its successors and assigns and NH Owner and its successors and assigns, or any of them, as the context requires.

(jjjj) "Parcel(s)" - As the context may dictate, the Hotel Parcel, the Office Parcel, the Retail Parcel or the NH Parcel, or any of them.

(kkkk) "Permittees" - All Occupants and the officers, directors, members, managers, employees, agents, contractors, customers, vendors, suppliers, visitors,



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guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of any Parcel.

(llll) "**Person**" - 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.

(mmmm) "**Pipes**" - All pipes, fittings, ducts, conduits, lines, braces, collars and other supporting elements serving a Parcel.

(nnnn) "**Prior Lien**" - As defined in Section 12.2(a).

(oooo) "**Preservation Easement**" - That certain Preservation Easement, dated as of March 5, 2008, by and between 208 South LaSalle, LLC, a Delaware limited liability company and the Landmarks Preservation Council of Illinois, an Illinois not-for-profit corporation and recorded against the Parcels on March 6, 2008 as Document No. 0806641189.

(pppp) "**Progress Payment**" - As defined in Paragraph 2 of **Exhibit 7.8**.

(qqqq) "**Project**" - the Hotel Project, the Office Project, the Retail Project and the NH Project, collectively.

(rrrr) "**Projection Notice**" - As defined in Paragraph 2(a) of **Exhibit 7.8**.

(ssss) "**Projections**" - As defined in Paragraph 2(a)(i) of **Exhibit 7.8**.

(tttt) "**Project Plans**" - The drawings prepared by Lucien LaGrange Architects, dated October 12, 2007, all of which are referenced on Schedule 1 attached hereto, which Project Plans are subject to revision from time to time. For purposes of clarification, any Improvements to the Building existing as of the date hereof are deemed to have been built in accordance with the Project Plans.

(uuuu) "**Project Quality Standards**" - The standards required to construct, operate, maintain, repair and restore the Project (including, but not limited to, all Improvements) in a condition and quality level consistent with (a) a high-quality mixed use, high-rise development containing office space, (b) an upper upscale, full-service branded hotel, operated and maintained in accordance with the system standards of the manager then operating a hotel in the Hotel Parcel, (c) an upscale limited or full service hotel, operated and maintained in accordance with the system standards of the manager then operating a hotel in the NH Parcel, (d) comparable properties in downtown Chicago, and (e) the standards for Maintenance established in Section 11.1 of this Agreement. With regard to (i) the Hotel Parcel, in the event of any conflict between the standards described in (a) and (b) in the immediately preceding sentence, the higher standard shall control and (ii) the NH Parcel, in the event of any conflict between the standards described in clauses (c) and (e) in the immediately preceding sentence, the higher standard shall control.

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(vvvv) "Property" - A collective reference to the Hotel Parcel, the Hotel Parcel Improvements, the Hotel Owned Facilities, the Office Parcel, the Office Parcel Improvements, the Office Owned Facilities, the Retail Parcel, the Retail Parcel Improvements, the Retail Owned Facilities, the NH Parcel, the NH Parcel Improvements and the NH Owned Facilities.

(www) "Property Appraisal" - As defined in Section 11.5.

(xxxx) "Recorder" - The Recorder of Deeds of Cook County, Illinois.

(yyyy) "Replacing Party" - As defined in Paragraph 1(a) of Exhibit 7.8.

(zzzz) "Requesting Owner" - As defined in Section 17.1.

(aaaa) "Retail Communications Facilities" - As defined in Exhibit 5.2(i).

(bbbb) "Retail Façade" - The exterior walls of the Retail Parcel Improvements from the street level of the Building to the floor of the second level, consisting of the glass, granite, terra cotta, limestone and other facing materials, colonnades covering or attached to the concrete or steel structural supports forming the curtain wall of the Building, window frames, window systems, joints and seals, but excluding (i) the Hotel Façade, (ii) the Office Façade, (iii) the NH Façade, and (iv) the structural supports for the exterior wall of the Building.

(cccc) "Retail Owned Facilities" - Facilities owned by Retail Owner and now located (or which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located) in the Hotel Parcel, the Office Parcel or the NH Parcel.

(dddd) "Retail Owner" - The Owner, from time to time, of the Retail Parcel.

(eeee) "Retail Parcel" - As defined in Recital C above.

(ffff) "Retail Parcel Appraisal" - As defined in Section 11.5.

(gggg) "Retail Parcel Improvements" - All improvements constructed upon and within the Retail Parcel and not constituting Office Owned Facilities, Hotel Owned Facilities or NH Owned Facilities.

(hhhh) "Retail Project" - As defined in Recital E above.

(iiii) "Retail Property" - A collective reference to the Retail Parcel and the Retail Parcel Improvements.

(jjjj) "Review" - As defined in Section 8.5.

(kkkk) "Shared Freight Elevator" - As defined in Section 2.2(j)(ii).

(llll) "Sidewalks" - As defined in Section 7.1(i).

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(mmmmm) "Signage Criteria" - As defined in Section 8.4(d).

(nnnnn) "Southwest Elevator Banks" - As defined in Section 2.2(j)(ii).

(ooooo) "Statement" - As defined in Paragraph 2(h) of **Exhibit 7.8**.

(ppppp) "Structural Supports" - All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Hotel Parcel Improvements, the Office Parcel Improvements, the Retail Parcel Improvements and the NH Parcel Improvements.

(qqqqq) "Tablature Sign" - As defined in Section 2.2(e).

(rrrrr) "Trash Room" - The trash room located on the ground floor of the Building as shown in the Project Plans.

(sssss) "Unavoidable Delay" - As defined in Section 14.3.

(ttttt) "Utility Company" - Any Person, including governmental bodies, furnishing Utility Services to or from one or more Parcels.

(uuuuu) "Utility Facilities" - Any Facility used for providing Utility Services.

(vvvvv) "Utility Service" or "Utility Services" - Any utility service provided to or from a Parcel, including domestic (City) water supply, chilled water, electricity, storm sewer, sanitary sewer, gas, steam, telephone or network television, cable television, satellite equipment and microwave signals or internet service or other services or materials generally known as utilities.

(wwwww) "Work" - As defined in Section 19.1(a).

1.2 **Construing Various Words and Phrases.** Wherever it is provided in this Agreement that a party "may" perform an act or do anything, it shall be construed that party "may, but shall not be obligated to," so perform or so do. The following words and phrases shall be construed as follows: (a) "at any time" shall be construed as "at any time or from time to time;" (b) "any" shall be construed as "any and all;" (c) "including" shall be construed as "including but not limited to;" and (d) "will" and "shall" shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Agreement and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Agreement. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Agreement for convenience only and shall not be used to construe the meaning of any part of this Agreement.

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## ARTICLE 2

### EASEMENTS BURDENING THE HOTEL PARCEL

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

(a) Hotel Owner hereby grants, declares and creates the Easements described in this Article 2. The term "Grant" or "grant" as hereinafter used in this Article 2 describing Easements shall be deemed to mean "grant, declare and create." The Easements in this Article 2 shall bind and be enforceable against Hotel Owner and, as applicable, its successors, grantees and assigns.

(b) The Easements granted by this Article 2 shall, as applicable, bind and burden the Hotel Parcel, which shall for the purpose of this Article 2 be deemed to be the servient tenement. Where only a portion of the Hotel Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(c) Unless otherwise indicated, the Easements granted by this Article 2 are appurtenant to and benefit the Office Parcel, the Retail Parcel and the NH Parcel, as applicable. The Office Parcel, the Retail Parcel and the NH Parcel, as applicable, shall, for the purpose of this Article 2, be deemed to be the dominant tenements.

(d) In exercising an Easement granted under this Article 2, Office Owner, Retail Owner or NH Owner (as applicable) shall: (i) have the right to ingress and egress over, through and upon the Hotel Parcel to the extent necessary to exercise the rights granted by such Easement; and (ii) minimize the impact of its exercise on Hotel Owner and Occupants of the Hotel Parcel, taking into consideration the impact of any disruption on Hotel Owner and such Occupants and business operations in the Hotel Parcel. Office Owner, Retail Owner and NH Owner acknowledge that a hotel will be operating within the Hotel Parcel and, accordingly, in exercising their respective easement rights contemplated herein, Office Owner, Retail Owner and NH Owner shall account for the unique aspects and needs of such hotel use (for example, if Office Owned Facilities or Retail Owned Facilities require Maintenance in a non-Emergency Situation that must be undertaken within hotel rooms, Office Owner or Retail Owner (as applicable) shall coordinate such Maintenance with Hotel Owner and use commercially reasonable efforts to cause such Maintenance to be performed during times when such rooms are not occupied; and if Maintenance in an Emergency Situation is required in hotel rooms, Office Owner or Retail Owner (as applicable) shall make commercially reasonable efforts to coordinate such Maintenance with Hotel Owner, taking into account the nature of the Emergency Situation). Notwithstanding anything to the contrary contained herein, in the event that any access, use, repair, Maintenance or other right pursuant to which an Easement is granted under this Article 2 may be effectively exercised without entering the Hotel Parcel (or any Owner's Parcel other than the performing Owner's Parcel), or conducting any invasive procedures within the Hotel Parcel (or any Owner's Parcel other than the performing Owner's Parcel), or otherwise disrupting the use, operation or rights of Occupants within the Hotel Parcel (or any Owner's Parcel other than the performing

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Owner's Parcel), Office Owner, Retail Owner or NH Owner (as applicable) shall use commercially reasonable efforts to exercise such rights without entering into, conducting any invasive procedures within or otherwise disrupting the use of the Hotel Parcel or Hotel Owner or Occupants of any portion of the Hotel Parcel (for example, and in no way limiting the foregoing, if Office Owner can reasonably access a Utility Facility either from the Hotel Parcel or the Office Parcel, Office Owner shall perform such work, and utilize such access, from the Office Parcel).

(e) Hotel Owner may, (i) in connection with the Maintenance of the Hotel Parcel upon not less than forty-eight (48) hours notice to Office Owner, Retail Owner or NH Owner (as applicable); (ii) in an Emergency Situation; (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of the Hotel Parcel or (iv) in connection with Hotel Owner's security measures (which shall be coordinated with the security measures of Office Owner, Retail Owner and NH Owner): temporarily prevent, close off or restrict the ingress, egress or use in, over, on, across and through any of the Easements granted under this Article 2, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement.

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

(g) Office Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Office Owner's rights granted herein.

(h) Retail Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Retail Owner's rights granted herein.

(i) NH Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of NH Owner's rights granted herein.

**2.2 Grant of Easements by Hotel Owner in Favor of Office Owner, Retail Owner and NH Owner.** Unless otherwise indicated, the following Easements in, to, under, over, upon and through the Hotel Parcel in favor of Office Owner, Retail Owner, NH Owner and their respective Permittees, the Office Parcel, the Retail Parcel and the NH Parcel are hereby granted; provided, however, the interest of each such Owner in such Easements shall be limited to the extent reasonably necessary to permit the use, operation and Maintenance of such Owner's Parcel.

(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time be enacted by Hotel Owner or its Occupants (as applicable), a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Hotel Parcel as are reasonably necessary or

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desirable to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Office Parcel, the Retail Parcel or the NH Parcel (as applicable), including without limitation (a) the Office Owned Facilities, the Retail Owned Facilities or the NH Owned Facilities (as applicable) and (b) the Loading Dock, Loading Area, Trash Room and related Facilities referenced in Section 2.2(d) below; (ii) permit Office Owner to provide to the Hotel Parcel those services to be performed by such Owner as described in Article 7 of this Agreement; or (iii) perform (w) all construction work in the NH Parcel in connection with NH Owner's construction of the NH Parcel Improvements, or (x) all construction work in the Retail Parcel in connection with Retail Owner's construction of the Retail Parcel Improvements (as applicable); provided, however, that such construction easement right shall be temporary and shall automatically terminate upon completion of the NH Parcel Improvements or the Retail Parcel Improvements (as applicable), (y) Alterations, pursuant to Article 16 hereof, and (z) restoration after damage or destruction, pursuant to Article 11 hereof, or condemnation, pursuant to Article 15 hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, stairways, entryways, escalators, and other passageways (i) at all times the same are made available for use by the public by Hotel Owner, and at all times (whether or not open to the public) with respect to those stairways, elevator shafts and other Facilities providing access to the Office Parcel, the Retail Parcel or the NH Parcel (as applicable); (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by Hotel Owner and Office Owner, Retail Owner or NH Owner (as applicable). Notwithstanding anything set forth herein to the contrary, other than in an Emergency Situation, Retail Owner shall have no right to access (i) any portion of the Hotel Parcel above the ground floor of the Building, or (ii) any stairwell, elevator or escalator other than to access the basement levels of the Building in order to exercise Retail Owner's rights and perform its obligations under this Article 2.

(b) **Use and Maintenance of Pipes and Facilities.** A non-exclusive easement for Persons, material and equipment over, on, across and through such portions of the Hotel Parcel as are reasonably necessary for the intended use and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of all Pipes and Facilities, if any, which are (i) located in the Hotel Parcel (including Office Owned Facilities, Retail Owned Facilities and NH Owned Facilities), and (ii) connected to Pipes or Facilities located in the Office Parcel, the Retail Parcel or the NH Parcel (as applicable) which provide or are reasonably necessary to provide the Office Parcel, the Retail Parcel or the NH Parcel (as applicable) with any Utility Service or other service reasonably necessary or desirable to the operation of the Office Parcel, the Retail Parcel or the NH Parcel (as applicable).

(c) **Common Walls, Floors and Ceilings.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and

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Ceilings existing or constructed in and along the common boundaries of the Hotel Parcel and the Office Parcel, the Retail Parcel or the NH Parcel (as applicable).

(d) **Loading Dock, Loading Area and Trash Room.** A non-exclusive easement to use the Loading Dock, Loading Area, Trash Room and related Facilities (collectively, the "**Loading Facilities**") in accordance with rules and regulations established by Hotel Owner from time to time, which rules and regulations shall be enforced in a non-discriminatory manner. Hotel Owner shall contract for trash removal service for the entire Building, subject to reimbursement from the other Owners in accordance with Exhibit 7.1(f) of this Agreement. Hotel Owner shall coordinate the use of the Loading Dock, Loading Area, Trash Room and related Facilities by the Owners and their respective Permittees (including, but not limited to, scheduling deliveries and shipments, Occupant move-in and move-out, allocation of spaces and bays within the Loading Facilities to reasonably accommodate, in its reasonable discretion, the requirements of the Owners and their respective Occupants and to ensure compliance with the City's Municipal Code) and the representative of the United States Government responsible for administering the security measures on Quincy Street. The Owners shall consult and coordinate with each other with respect to their rights, as owners of the Building, under that certain Easement Agreement and Declaration of Covenants, Conditions and Restrictions (the "**Federal Reserve Agreement**"), dated as of May 6, 2003, between the Federal Reserve Bank of Chicago and LaSalle-Adams L.L.C., a Delaware limited liability company, which Federal Reserve Agreement was recorded with the Recorder on August 14, 2003 as Document No. 0322645090, as amended from time to time. Subject to the foregoing obligation to consult and coordinate, the Owners shall each have the right to access the Loading Facilities, and any dispute relating thereto shall constitute an Arbitrable Dispute.

(e) **NH Owner's Signage Easement.** To and for the benefit of NH Owner, in compliance with applicable Laws, the following easement rights to install, affix, repair, replace and Maintain a tabature sign (the "**Tabature Sign**") identifying the NH Parcel on the Hotel Façade above the LaSalle Street entrance to the Building in the location of the existing "City National Bank and Trust Company" tabature sign. The easement rights reserved in the immediately preceding sentence shall be perpetual and exclusive and shall include all necessary easement rights to install, connect and Maintain any signage being installed pursuant to this Section. The foregoing easement rights shall include the right to enter upon the Property, the Building and all component thereof (including, without limitation, the exterior walls of the Building and any scaffolding erected adjacent to the Building), to Maintain such signage, or to modify or change such signage, from time to time, as well as the right to construct scaffolding or other apparatus necessary or appropriate to exercise the foregoing rights. The size, location, type, style, content, appearance and design of the signage contemplated in this Section shall be substantially in conformance the requirements of the Preservation Easement and consistent with the Project Quality Standards, provided that such signage shall at all times comply with the requirements of this Agreement and all applicable Laws. NH Owner, at its sole cost and expense, shall maintain the signage allowed by this Section in good condition and repair, shall pay for all utilities consumed in connection therewith and shall

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comply with all Laws applicable thereto, including obtaining and maintaining all permits and licenses. Hotel Owner may temporarily remove the signage during any period it is Maintaining the Hotel Façade, all in accordance with the terms and conditions of this Agreement; provided, however, that Hotel Owner shall: (1) not be permitted to remove such signage unless such removal is necessary in order to perform Maintenance; (2) provide prior written notice of such removal to NH Owner; (3) use reasonable efforts not to disturb such signage during any such Maintenance, (4) use reasonable efforts to limit the duration of such disruption to the shortest practicable period of time; (5) promptly reattach such signage upon completion of any such work; and (6) repair any damage suffered by such signage (and, to the extent necessary, replace such signage) as a result of any such Maintenance at its sole cost and expense upon completion of any such Maintenance. The foregoing signage Easement rights shall not be deemed to include a right for NH Owner to drill or bore into any portion of the Hotel Façade or any other Hotel Parcel Improvements for purposes of connecting electrical service or conduits to such signage.

(f) **Utility Services.** A non-exclusive easement (and if requested by the applicable Utility Company, a non-exclusive easement to such Utility Company) for Utility Service purposes required by the Office Parcel, the Retail Parcel or the NH Parcel (as applicable) and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Office Parcel, the Retail Parcel or the NH Parcel (as applicable) in those areas of the Hotel Parcel where such Utility Facilities are currently located or are to be located (including, without limitation, access to the basement levels of the Building for such purposes). If, at any time, it becomes necessary for the operation of the Office Parcel, the Retail Parcel or the NH Parcel (as applicable) to relocate or add to utility easements (including installation of Utility Facilities) other than where located or to be located in the Hotel Parcel in order to provide or upgrade required Utility Service to the Office Parcel, the Retail Parcel or the NH Parcel (as applicable), Hotel Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by Office Owner, Retail Owner or NH Owner (as applicable) and Hotel Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Hotel Parcel for the purposes for which the Hotel Parcel is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, and do not unduly inconvenience the Owner or Occupant(s) of, or cause any business interruption within, the Hotel Parcel and (2) Office Owner, Retail Owner or NH Owner (as applicable) shall pay the reasonable costs and expenses incurred by Hotel Owner in connection with granting such easement. Hotel Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel, or otherwise adversely affect the Utility Services to any other Parcel, (ii) Hotel Owner shall not change any points of connection between such Utility Facilities and the other Parcels, unless Hotel Owner pays all costs of relocating such connection points that are incurred by Office Owner, Retail Owner or NH Owner (as applicable) and (iii) Hotel Owner shall promptly apprise Office Owner, Retail Owner or NH Owner (as applicable) regarding the new location of any easements and provide such Owner at least ten (10) days written



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notice prior to relocating any utility easements. Notwithstanding anything set forth herein to the contrary, Hotel Owner shall not be deemed unreasonable if it fails to grant a relocation of an existing Easement, or a new Easement, if prohibited by the terms of any lease of the Hotel Parcel or any portion thereof then in effect or if the Hotel Parcel's Mortgagee will not consent to such relocation.

(g) **Structural Support**. A non-exclusive easement in all Structural Supports located in or constituting a part of the Hotel Parcel Improvements for the support of the Office Parcel Improvements, the Retail Parcel Improvements or the NH Parcel Improvements (as applicable) and Office Owned Facilities, the Retail Owned Facilities or the NH Owned Facilities (as applicable) and the Maintenance of such Structural Supports and the Office Owned Facilities, the Retail Owned Facilities or the NH Owned Facilities (as applicable); provided that Office Owner, Retail Owner or NH Owner (as applicable) shall not do or permit to be done any act that would adversely affect the structural safety or integrity of Structural Supports or any portion of the Hotel Parcel Improvements.

(h) **Encroachments**. An exclusive easement permitting the existence of (i) encroachments of six (6) inches or less if such encroachments result from the construction of any of the Office Parcel Improvements, the Retail Parcel Improvements or the NH Parcel Improvements (as applicable) or the permitted renovation of such Improvements or if, by reason of settlement or shifting of the such Improvements, any part of such Improvements, Office Owned Facilities, Retail Owned Facilities or NH Owned Facilities (as applicable) encroaches or shall hereafter encroach upon any part of the Hotel Parcel and (ii) the additional encroachments of the Retail Parcel Improvements, Office Parcel Improvements and NH Parcel Improvements located on the First Floor of the Building upon the Hotel Parcel, as depicted on **Exhibit C** attached hereto. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements are made in the same location that do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(i) **Office Owned Facilities, Retail Owned Facilities and NH Owned Facilities**. A non-exclusive easement permitting the existence, attachment, use and Maintenance of (x) Office Owned Facilities, Retail Owned Facilities or the NH Owned Facilities (as applicable) in the Hotel Parcel in their present locations as otherwise specified or depicted in the Project Plans, and (y) as constructed from time to time.

(j) **Use of Passenger/Freight Elevator**.

(i) A non-exclusive easement for passenger elevator use as necessary or desirable for Office Owner, Retail Owner, NH Owner and their respective Permittees to perform Maintenance pursuant to this Agreement (or pursuant to separate agreements between the Owners) or in an Emergency Situation and for no other purposes.

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(ii) With respect to freight elevator service, Office Owner, NH Owner and their respective Permittees (but not Retail Owner or its Permittees) shall have the non-exclusive right to use the freight elevator located in the Southwest corner of the Building, adjacent to the Loading Dock (the "Southwest Elevator Banks") which is designated on the Project Plans as the "Office Freight Elevator #9" (the "Shared Freight Elevator"), on a twenty-four (24) hour, seven (7) day a week basis, for delivery and removal of foods, beverages, furniture, fixtures, equipment, office supplies, laundry and other items necessary or convenient for the operation of the Office Parcel and the NH Parcel. The use of the Shared Freight Elevator by Office Owner and NH Owner shall be in accordance with rules and regulations established by Hotel Owner from time to time, which rules and regulations shall be reasonably enforced. Notwithstanding anything set forth herein to the contrary, Hotel Owner, NH Owner and their respective Occupants shall have the priority right to use the Shared Freight Elevator in connection with the day-to-day operations of the hotel in the Hotel Parcel and the hotel in the NH Parcel; provided, however, (x) Hotel Owner shall use commercially reasonable efforts to accommodate Office Owner's use of the Shared Freight Elevator by using other freight elevators in the Hotel Parcel when such other elevators are available; and (y) NH Owner shall use commercially reasonable efforts to accommodate Office Owner's use of the Shared Freight Elevator by using other freight elevators in the NH Parcel when such other elevators are available.

(iii) With respect to passenger elevator service, NH Owner (but not Retail Owner, Office Owner or their respective Permittees) shall have an exclusive easement to use the passenger elevators located in the Southwest Elevator Banks which are designated on the Project Plans as Elevator Nos. 7, 8 and 12 (collectively, the "NH Passenger Elevators - Wells") on a twenty-four (24) hour, seven (7) day a week basis, for ingress and egress only for Persons, materials and equipment to and from the Southwest Elevator Banks and the NH Parcel. From time to time, NH Owner may grant Office Owner and its Occupants a license to use one or more of such elevators, as determined by NH Owner.

Hotel Owner shall own the Shared Freight Elevator and related Facilities and shall be solely responsible for the Maintenance thereof, subject to reimbursement by Office Owner and NH Owner in accordance with Section 7.1(k) hereof. NH Owner shall own the NH Passenger Elevators -- Wells and related Facilities and shall be solely responsible for the Maintenance thereof at NH Owner's sole expense.

(iv) A non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, the elevator shafts, rails, equipment and other Facilities related thereto, located within the Hotel Parcel as are necessary for the use, operation and Maintenance of freight and passenger elevators, elevator cabs, motors, cables, components and other Facilities relating to such

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freight and passenger elevators located on the Office Parcel, the NH Parcel or the Hotel Parcel (as applicable), as depicted on the Project Plans.

(k) **Stairwells.** A non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, the stairwells and attendant Facilities located within the Hotel Parcel providing vertical access to the Office Parcel and the NH Parcel as depicted on the Project Plans; provided, however this Easement shall only benefit Office Owner, the Office Parcel, NH Owner and the NH Parcel and Office Owner, NH Owner and their respective Occupants may only exercise their rights with respect to this Easement in an Emergency Situation or in connection with regular, inspections and tests (such as fire safety drills) conducted by governmental authorities for the purpose of ascertaining compliance with laws, rules and regulations pertaining to health, life safety and building matters.

(l) **Basement Facilities.** To and for the benefit of the Office Parcel, the Retail Parcel, the NH Parcel, Office Owner, Retail Owner and NH Owner (and any Utility Company, if required), a non-exclusive easement for the installation, use, and Maintenance of all mechanical and utility Facilities in the basement levels of the Building which are located in such basement levels as of the date of this Agreement, and Facilities serving the same, in such locations as are mutually acceptable to the Owners.

## ARTICLE 3

### EASEMENTS BURDENING THE OFFICE PARCEL

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

(a) Office Owner hereby grants, declares and creates the Easements described in this Article 3. The term "Grant" or "grant" as hereinafter used in this Article 3 describing Easements shall be deemed to mean "grant, declare and create." The Easements in this Article 3 shall bind and be enforceable against Office Owner and, as applicable, its successors, grantees and assigns.

(b) The Easements granted by this Article 3 shall, as applicable, bind and burden the Office Parcel, which shall for the purpose of this Article 3 be deemed to be the servient tenement. Where only a portion of the Office Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(c) Unless otherwise indicated, the Easements granted by this Article 3 are appurtenant to and benefit the Hotel Parcel, the Retail Parcel and the NH Parcel, as applicable. The Hotel Parcel, the Retail Parcel and the NH Parcel, as applicable, shall, for the purpose of this Article 3, be deemed to be the dominant tenements.

(d) In exercising an Easement granted under this Article 3, Hotel Owner, Retail Owner or NH Owner (as applicable) shall: (i) have the right to ingress and egress over, through and upon the Office Parcel to the extent necessary to exercise the rights

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granted by such Easement; and (ii) minimize the impact of its exercise on Office Owner and Occupants of the Office Parcel, taking into consideration the impact of any disruption on Office Owner and such Occupants, as well as business operations in the Office Parcel. Hotel Owner, Retail Owner and NH Owner acknowledge that office uses are operating within the Office Parcel and, accordingly, in exercising their respective easement rights contemplated herein, Hotel Owner, Retail Owner and NH Owner shall account for the unique aspects and needs of such office uses (for example, if Hotel Owned Facilities or Retail Owned Facilities require Maintenance in a non-Emergency Situation that must be undertaken within office space, Hotel Owner or Retail Owner (as applicable) shall coordinate such Maintenance with Office Owner and use commercially reasonable efforts to cause such Maintenance to be performed outside of normal business hours; and if Maintenance in an Emergency Situation is required within office space, Hotel Owner or Retail Owner (as applicable) shall make commercially reasonable efforts to coordinate such Maintenance with Office Owner, taking into account the nature of the Emergency Situation). Notwithstanding anything to the contrary contained herein, in the event that any access, use, repair, Maintenance or other right pursuant to which an Easement is granted under this Article 3 may be effectively exercised without entering the Office Parcel (or any other Owner's Parcel), or conducting any invasive procedures within the Office Parcel (or any other Owner's Parcel), or otherwise disrupting the use, operation or the rights of Occupants within the Office Parcel (or any other Owner's Parcel), Hotel Owner, Retail Owner or NH Owner (as applicable) shall use commercially reasonable efforts to exercise such rights without entering into, conducting any invasive procedures within or otherwise disrupting the use of the Office Parcel or its Owner or Occupants of any portion of the Office Parcel (for example, and in no way limiting the foregoing, if Hotel Owner can reasonably access a Utility Facility either from the Office Parcel or the Hotel Parcel, Hotel Owner shall perform such work, and utilize such access, from the Hotel Parcel).

(e) Office Owner may, (i) in connection with the Maintenance of the Office Parcel upon not less than forty-eight (48) hours notice to Hotel Owner, Retail Owner or NH Owner (as applicable), (ii) in an Emergency Situation (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of the Office Parcel or (iv) in connection with Office Owner's security measures (which shall be coordinated with Hotel Owner's, Retail Owner's and NH Owner's respective security measures): temporarily prevent, close off or restrict the ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement.

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

(g) Hotel Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Hotel Owner's rights granted herein.

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(h) Retail Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Retail Owner's rights granted herein.

(i) NH Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of NH Owner's rights granted herein.

**3.2 Grant of Easements by Office Owner in Favor of Hotel Owner, Retail Owner and NH Owner.** Unless otherwise indicated, the following Easements in, to, under, over, upon and through the Office Parcel are hereby granted in favor of Hotel Owner, Retail Owner and NH Owner and their respective Permittees, the Hotel Parcel, the Retail Parcel and the NH Parcel; provided, however, the interest of each such Owner in such Easements shall be limited to the extent reasonably necessary to permit the use, operation and Maintenance of such Owner's Parcel:

(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time, be enacted by office Owner or its Occupants (as applicable) of Office Owner and its Occupants, a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Office Parcel as are reasonably necessary to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable), including, without limitation, the Hotel Owned Facilities, the Retail Owned Facilities or the NH Owned Facilities (as applicable); (ii) permit Hotel Owner and NH Owner to provide to the Office Parcel those services to be performed by such Owner as described in Article 7 of this Agreement or (iii) perform (w) all construction work in the NH Parcel in connection with NH Owner's construction of the NH Parcel Improvements, (x) all construction work in the Retail Parcel in connection with Retail Owner's construction of the Retail Parcel Improvements (as applicable); provided, however, that such construction easement right shall be temporary and shall automatically terminate upon completion of the NH Parcel Improvements or the Retail Improvements, as applicable, (y) Alterations, pursuant to Article 16 hereof, and (z) restoration after damage or destruction, pursuant to Article 11 hereof, or condemnation, pursuant to Article 15 hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, stairways, entryways, escalators and other passageways (i) at all times the same are made available for use by the public by Office Owner, and at all times (whether or not open to the public) with respect to those stairways, elevator shafts and other Facilities providing access to the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable); (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by the Owners. Those portions of the LaSalle Street entrance and the LaSalle Street lobby (as the same may be reconfigured in connection with the NH Parcel Improvements) (collectively, the "LaSalle Street Entrance Area") owned by Office Owner shall remain open for the use of NH Owner,

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Retail Owner and their respective Occupants on a twenty-four (24) hours a day/seven (7) days a week basis. Without limiting the foregoing, if and to the extent that any of the Easement rights set forth in Section 3.2 require access to areas other than the ground floor of the Building, such Easement rights shall be deemed to include Easement rights to use the elevators and stairwells in the Office Parcel to access such areas of the Office Parcel as are reasonably necessary to exercise such Easement rights. Notwithstanding anything set forth herein to the contrary, other than in an Emergency Situation, (A) Retail Owner shall have no right to access any portion of the Office Parcel above the ground floor of the Building, and (B) Hotel Owner shall have the right to use the LaSalle Street Entrance Area solely for purposes of (i) allowing hotel guests reasonable access to (x) the Hotel Passenger Elevators -- LaSalle (as hereafter defined) and stairs owned by Hotel Owner in the southeast corner of the Building and (y) the hotel lobby located on the Hotel Parcel through a door presently located in the existing retail corridor portion of the NH Parcel, as long as open access to the Hotel lobby is provided through such door; and (ii) performing Maintenance to the Hotel Passenger Elevators -- LaSalle and related Facilities, to the extent reasonably required.

(b) **Use and Maintenance of Pipes and Facilities.** A non-exclusive easement for the intended use and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of all Pipes and Facilities, if any, which are (i) located in the Office Parcel (including Hotel Owned Facilities, Retail Owned Facilities and NH Owned Facilities), and (ii) connected to Pipes or Facilities located in the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable) which provide or are reasonably necessary to provide the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable) with any Utility Service or other connection reasonably necessary to the operation of the Hotel Parcel, the Retail Parcel or NH Parcel (as applicable). The aforesaid easement expressly includes the right of (x) Hotel Owner to connect to and use the Pipes designated on the Project Plans for ventilation and exhaust in connection with (A) restaurant and other food service uses; and (B) hotel plumbing; and (y) NH Owner to connect to and use the Pipes for ventilation and exhaust in connection with (1) restaurant and other food service uses; and (2) hotel plumbing.

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

(d) **Utility Services.** A non-exclusive easement (and if requested by the applicable Utility Company, a non-exclusive easement to such Utility Company) for Utility Service purposes required by the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable) and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable) in those areas of the Office Parcel where such Utility Facilities are to be located as part of the Hotel Parcel Improvements, the Retail Parcel Improvements or the NH Parcel Improvements (as applicable). If, at any time, it becomes necessary for the operation of the Hotel Parcel, the Retail Parcel or

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the NH Parcel (as applicable) to relocate or add to utility easements (including installation of Utility Facilities) other than where located or to be located as part of the Improvements in order to provide or upgrade required Utility Service to the Hotel Parcel, the Retail Parcel or the NH Parcel (as applicable), Office Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by Hotel Owner, Retail Owner or NH Owner (as applicable) and Office Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Office Parcel for the purposes for which the Office Parcel is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, and do not unduly inconvenience the Owner or Occupant(s), or cause any business interruption within, of the Office Parcel and (2) Hotel Owner, Retail Owner or NH Owner (as applicable) shall pay the reasonable costs and expenses incurred by Office Owner in connection with granting such easement. Office Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel or otherwise adversely affect the Utility Services to any other Parcel, (ii) Office Owner shall not change any points of connection with the Utility Facilities located on any other Parcel unless Office Owner pays all costs of relocating such connection points that are incurred by Hotel Owner, Retail Owner or NH Owner (as applicable) and (iii) Office Owner shall promptly apprise Hotel Owner, Retail Owner or NH Owner (as applicable) regarding the new location of any easements and provide such Owner at least ten (10) days written notice prior to relocating any utility easements. Notwithstanding anything set forth herein to the contrary, Office Owner shall not be deemed unreasonable if it fails to grant a relocation of an existing Easement or a new Easement, if prohibited by the terms of any lease of the Office Parcel or any portion thereof then in effect or if Office Owner's Mortgagee will not consent to such relocation.

(c) **Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the Office Parcel Improvements for the support of the Hotel Parcel Improvements, the Retail Parcel Improvements or NH Parcel Improvements (as applicable) and Hotel Owned Facilities, Retail Owned Facilities or NH Owned Facilities (as applicable) and the Maintenance of such Structural Supports and Hotel Owned Facilities, Retail Owned Facilities or NH Owned Facilities (as applicable); provided that Hotel Owner, Retail Owner or NH Owner (as applicable) shall not do or permit to be done any act that would adversely affect the structural safety or integrity of Structural Supports or any portion of the Office Parcel Improvements.

(f) **Encroachments.** An exclusive easement permitting the existence of (i) encroachments of six (6) inches or less if such encroachments result from the construction of any of the Hotel Parcel Improvements, the Retail Parcel Improvements or NH Parcel Improvements (as applicable) or the permitted renovation of such Improvements or if, by reason of settlement or shifting of such Improvements, any part of such Improvements, Hotel Owned Facilities, Retail Owned Facilities or NH Owned Facilities (as applicable) encroaches or shall hereafter encroach upon any part of the Office Parcel and (ii) the additional encroachments of the Hotel Parcel Improvements, Retail Parcel Improvements and NH Parcel Improvements located on the First Floor of

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the Building upon the Office Parcel, as depicted on **Exhibit C** attached hereto. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements are made in the same location that do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(g) **Hotel Owned Facilities and Retail Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Hotel Owned Facilities, Retail Owned Facilities or NH Owned Facilities (as applicable) in the Office Parcel in their present locations or as otherwise specified in the Project Plans.

(h) **Hotel Parcel's Use of Passenger/Freight Elevators.**

(i) A non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, the elevator shafts, rails, equipment and other Facilities related thereto, located within the Office Parcel as are necessary for the use, operation and Maintenance of freight and passenger elevators, elevator cabs, motors, cables, components and other Facilities relating to such freight and passenger elevators located on and serving the Hotel Parcel, as depicted on the Project Plans; provided, however, this Easement shall only benefit Hotel Owner and the Hotel Parcel.

(ii) A non-exclusive easement for passenger elevator use as necessary or desirable for Hotel Owner and its Permittees to perform Maintenance pursuant to this Agreement (or pursuant to a separate agreement between Office Owner and Hotel Owner) or in an Emergency Situation and for no other purposes. Hotel Owner acknowledges that it shall be solely responsible for providing its own passenger elevator service and freight elevator service between floors comprising the Hotel Parcel. This easement shall only benefit Hotel Owner and the Hotel Parcel.

(i) **NH Parcel's Use of Passenger/Freight Elevators.**

(i) A non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, the elevator shafts, rails, equipment and other Facilities related thereto, located within the Office Parcel as are necessary for NH Owner's use, operation and Maintenance of freight and passenger elevators (including, but not limited to, the Shared Freight Elevator, the NH Passenger Elevators - Wells and the passenger elevators located in the Southeast elevator banks which are designated on the Project Plans as Elevator Nos. 22, 23 and 24 (collectively, the "**NH Passenger Elevators - LaSalle**")), elevator cab motors, cables, components and other Facilities relating to such freight and passenger elevators serving the NH Parcel; provided, however, this Easement shall only benefit NH Owner and NH Parcel.



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(ii) A non-exclusive easement for passenger elevator use as necessary or desirable for NH Owner and its Permittees to perform Maintenance pursuant to this Agreement (or pursuant to a separate agreement between Office Owner and NH Owner) or in an Emergency Situation and for no other purposes.

## ARTICLE 4

### EASEMENTS BURDENING THE RETAIL PARCEL

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

(a) Retail Owner hereby grants, declares and creates the Easements described in this Article 4. The term "Grant" or "grant" as hereinafter used in this Article 4 describing Easements shall be deemed to mean "grant, declare and create." The Easements in this Article 4 shall bind and be enforceable against Retail Owner and, as applicable, its successors, grantees and assigns.

(b) The Easements granted by this Article 4 shall, as applicable, bind and burden the Retail Parcel, which shall for the purpose of this Article 4 be deemed to be the servient tenement. Where only a portion of the Retail Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(c) Unless otherwise indicated, the Easements granted by this Article 4 are appurtenant to and benefit the Hotel Parcel, the Office Parcel and the NH Parcel, as applicable. The Hotel Parcel, the Office Parcel and the NH Parcel, as applicable, shall, for the purpose of this Article 4, be deemed to be the dominant tenements.

(d) In exercising an Easement granted under this Article 4, Hotel Owner, Office Owner or NH Owner (as applicable) shall: (i) have the right to ingress and egress over, through and upon the Retail Parcel to the extent necessary to exercise the rights granted by such Easement; and (ii) minimize the impact of its exercise on Retail Owner and Occupants of the Retail Parcel, taking into consideration the impact of any disruption on Retail Owner and such Occupants, as well as business operations in the Retail Parcel. Hotel Owner, Office Owner and NH Owner acknowledge that retail uses are operating within the Retail Parcel and, accordingly, in exercising their respective easement rights contemplated herein, Hotel Owner, Office Owner and NH Owner shall account for the unique aspects and needs of such retail uses (for example, if Hotel Owned Facilities or Office Owned Facilities require Maintenance in a non-Emergency Situation that must be undertaken within retail space, Hotel Owner or Office Owner (as applicable) shall coordinate such Maintenance with Retail Owner and use commercially reasonable efforts to cause such Maintenance to be performed outside of normal business hours; and if Maintenance in an Emergency Situation is required within retail space, Hotel Owner or Office Owner (as applicable) shall make commercially reasonable efforts to coordinate such Maintenance with Retail Owner, taking into account the nature of the Emergency Situation). Notwithstanding anything to the contrary contained herein, in the event that any access, use, repair, Maintenance or other right pursuant to which an Easement is

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granted under this Article 4 may be effectively exercised without entering the Retail Parcel (or any other Owner's Parcel), or conducting any invasive procedures within the Retail Parcel (or any other Owner's Parcel), or otherwise disrupting the use, operation or the rights of Occupants within the Retail Parcel (or any other Owner's Parcel), Hotel Owner, Office Owner or NH Owner (as applicable) shall use commercially reasonable efforts to exercise such rights without entering into, conducting any invasive procedures within or otherwise disrupting the use of the Retail Parcel or its Owner or Occupants of any portion of the Retail Parcel (for example, and in no way limiting the foregoing, if Office Owner can reasonably access a Utility Facility either from the Office Parcel or the Retail Parcel, Office Owner shall perform such work, and utilize such access, from the Office Parcel).

(e) Retail Owner may, (i) in connection with the Maintenance of the Retail Parcel upon not less than forty-eight (48) hours notice to Hotel Owner, Office Owner or NH Owner (as applicable), (ii) in an Emergency Situation (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of the Retail Parcel or (iv) in connection with Retail Owner's security measures (which shall be coordinated with the security measures of Hotel Owner, Office Owner and NH Owner): temporarily prevent, close off or restrict the ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement.

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

(g) Hotel Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Hotel Owner's rights granted herein.

(h) Office Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Office Owner's rights granted herein.

(i) NH Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of NH Owner's rights granted herein.

**4.2 Grant of Easements by Retail Owner in Favor of Hotel Owner, Office Owner and NH Owner.** Unless otherwise indicated, the following Easements in, to, under, over, upon and through the Retail Parcel are hereby granted in favor of Hotel Owner, Office Owner and NH Owner and their respective Permittees, the Hotel Parcel, the Office Parcel and the NH Parcel; provided, however, the interest of each such Owner in such Easements shall be limited to the extent reasonably necessary to permit the use, operation and Maintenance of such Owner's Parcel:

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(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time, be enacted by Retail Owner or its Occupants (as applicable) of Retail Owner and its Occupants, a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Retail Parcel as are reasonably necessary to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable), including, without limitation, the Hotel Owned Facilities, the Office Owned Facilities or the NH Owned Facilities (as applicable); (ii) permit Hotel Owner, Office Owner or NH Owner (as applicable) to provide to the Retail Parcel those services to be performed by such Owner as described in Article 7 of this Agreement or (iii) perform all construction work in the NH Parcel in connection with NH Owner's construction of the NH Parcel Improvements; provided, however that such construction easements shall be temporary and shall automatically terminate upon completion of the NH Parcel Improvements, (x) Alterations, pursuant to Article 16 hereof, and (y) restoration after damage or destruction, pursuant to Article 11 hereof, or condemnation, pursuant to Article 15 hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, entryways and other passageways (i) at all times the same are made available for use by the public by Retail Owner, and at all times (whether or not open to the public) with respect to those other Facilities providing access to the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable); (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by the Owners.

(b) **NH Owner's Signage Easement.** To and for the benefit of NH Owner, in compliance with applicable Laws, the following easement rights to install, affix, repair, replace, Maintain and remove (subject to NH Owner's obligation to repair any damage caused by such removal) the one (1) pedestrian level plaque sign, located on the northeast corner of the Building (facing LaSalle Street) (the "**LaSalle Street Plaque Sign**"). The easement rights reserved in the immediately preceding sentence shall be perpetual and exclusive and shall include all necessary easement rights to install, connect and Maintain any signage being installed pursuant to this Section. The foregoing easement rights shall include the right to enter upon the Property, the Building and all components thereof (including, without limitation, the exterior walls of the Building and any scaffolding erected adjacent to the Building), to Maintain such signage, or to modify or change such signage, from time to time, as well as the right to construct scaffolding or other apparatus necessary or appropriate to exercise the foregoing rights. The size, location, type, style, content, appearance and design of the signage contemplated in this Section shall be substantially in conformance the requirements of the Preservation Easement and consistent with the Project Quality Standards, provided that such signage shall at all times comply with the requirements of this Agreement and all applicable Laws. NH Owner, at its sole cost and expense, shall maintain the signage allowed by this Section in good condition and repair, shall pay for all utilities consumed in connection therewith and shall comply with all Laws applicable thereto, including obtaining and maintaining all permits and licenses. Hotel Owner may temporarily remove the signage during any period it is

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Maintaining the Retail Façade on Retail Owner's behalf, all in accordance with the terms and conditions of this Agreement; provided, however, that Hotel Owner shall: (1) not be permitted to remove such signage unless such removal is necessary in order to perform Maintenance; (2) provide prior written notice of such removal to NH Owner; (3) use reasonable efforts not to disturb such signage during any such Maintenance, (4) use reasonable efforts to limit the duration of such disruption to the shortest practicable period of time; (5) promptly reattach such signage upon completion of any such work; and (6) repair any damage suffered by such signage (and, to the extent necessary, replace such signage) as a result of any such Maintenance at its sole cost and expense upon completion of any such Maintenance. The foregoing signage Easement rights shall not be deemed to include a right for NH Owner to drill or bore into any portion of the Retail Façade or any other Retail Parcel Improvements for purposes of connecting electrical service or conduits to such signage.

(c) **Hotel Owner's Signage Easement.** To and for the benefit of Hotel Owner, in compliance with applicable Laws, the following easement rights to install, affix, repair, replace, Maintain and remove (subject to Hotel Owner's obligation to repair any damage caused by such removal) the one (1) pedestrian level plaque sign, located on the northeast corner of the Building (facing Adams Street) (the "**Adams Street Plaque Sign**"). The easement rights reserved in the immediately preceding sentence shall be perpetual and exclusive and shall include all necessary easement rights to install, connect and Maintain any signage being installed pursuant to this Section. The foregoing easement rights shall include the right to enter upon the Property, the Building and all components thereof (including, without limitation, the exterior walls of the Building and any scaffolding erected adjacent to the Building), to Maintain such signage, or to modify or change such signage, from time to time, as well as the right to construct scaffolding or other apparatus necessary or appropriate to exercise the foregoing rights. The size, location, type, style, content, appearance and design of the signage contemplated in this Section shall be substantially in conformance the requirements of the Preservation Easement and consistent with the Project Quality Standards, provided that such signage shall at all times comply with the requirements of this Agreement and all applicable Laws. Hotel Owner, at its sole cost and expense, shall maintain the signage allowed by this Section in good condition and repair, shall pay for all utilities consumed in connection therewith and shall comply with all Laws applicable thereto, including obtaining and maintaining all permits and licenses. Hotel Owner may temporarily remove the signage during any period it is Maintaining the Retail Façade on Retail Owner's behalf, all in accordance with the terms and conditions of this Agreement; provided, however, that Hotel Owner shall, whenever removing such signage: (1) provide prior written notice of such removal to Retail Owner; (2) use reasonable efforts not to disturb such signage during any such Maintenance, (3) use reasonable efforts to limit the duration of such disruption to the shortest practicable period of time; (4) promptly reattach such signage upon completion of any such work; and (5) repair any damage suffered by such signage (and, to the extent necessary, replace such signage) as a result of any such Maintenance at its sole cost and expense upon completion of any such Maintenance. The foregoing signage Easement rights shall not be deemed to include a right for Hotel Owner to drill or bore into any portion of the Retail Façade or any other

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Retail Parcel Improvements for purposes of connecting electrical service or conduits to such signage.

(d) **Use and Maintenance of Pipes and Facilities.** A non-exclusive easement for persons, material and equipment over, on, across and through such portions of the Retail Parcel as are reasonably necessary for the intended use and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of all Pipes and Facilities, if any, which are (i) located in the Retail Parcel (including Hotel Owned Facilities, Office Owned Facilities and NH Owned Facilities), and (ii) connected to Pipes or Facilities located in the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable) which provide or are reasonably necessary to provide the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable) with any Utility Service or other service reasonably necessary or desirable to the operation of the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable). The aforesaid easement expressly includes (x) the right of Hotel Owner to connect to and use the Pipes designated on the Project Plans for ventilation and exhaust in connection with (A) restaurant and other food service uses and (B) plumbing; and (y) the right of NH Owner to connect to and use the Pipes for ventilation and exhaust in connection with (1) restaurant and other food service uses; and (2) plumbing.

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

(f) **Utility Services.** A non-exclusive easement (and if requested by the applicable Utility Company, a non-exclusive easement to such Utility Company) for Utility Service purposes required by the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable) and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable) in those areas of the Retail Parcel where such Utility Facilities are to be located as part of the Hotel Parcel Improvements, the Office Parcel Improvements or the NH Parcel Improvements (as applicable). If, at any time, it becomes necessary for the operation of the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable) to relocate or add to utility easements (including installation of Utility Facilities) other than where located or to be located as part of the Improvements in order to provide or upgrade required Utility Service to the Hotel Parcel, the Office Parcel or the NH Parcel (as applicable), Retail Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by Hotel Owner, Office Owner or NH Owner (as applicable) and Retail Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Retail Parcel for the purposes for which the Retail Parcel is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, and do not unduly inconvenience the Owner or Occupant(s) of, or cause any business interruption within, the Retail Parcel and (2) Hotel Owner, Office Owner or NH Owner (as applicable) shall pay the reasonable costs and expenses incurred by Retail Owner in connection with

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granting such easement. Retail Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel or otherwise adversely affect the Utility Services to any other Parcel, (ii) Retail Owner shall not change any points of connection with the Utility Facilities located on any other Parcel unless Retail Owner pays all costs of relocating such connection points that are incurred by Hotel Owner, Office Owner or NH Owner (as applicable) and (iii) Retail Owner shall promptly apprise Hotel Owner, Office Owner or NH Owner (as applicable) regarding the new location of any easements and provide such Owner at least ten (10) days written notice prior to relocating any utility easements. Notwithstanding anything set forth herein to the contrary, Retail Owner shall not be deemed unreasonable if it fails to grant a relocation of an existing Easement or a new Easement, if prohibited by the terms of any lease of the Retail Parcel or any portion thereof then in effect.

(g) **Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the Retail Parcel Improvements for the support of the Hotel Parcel Improvements, the Office Parcel Improvements or the NH Parcel Improvements (as applicable) and Hotel Owned Facilities, Office Owned Facilities or NH Owned Facilities (as applicable) and the Maintenance of such Structural Supports and Hotel Owned Facilities, Office Owned Facilities or NH Owned Facilities (as applicable); provided that Hotel Owner, Office Owner or NH Owner (as applicable) shall not do or permit to be done any act that would adversely affect the structural safety or integrity of Structural Supports or any portion of the Retail Parcel Improvements.

(h) **Encroachments.** An exclusive easement permitting the existence of (i) encroachments of six (6) inches or less if such encroachments result from the construction of any of the Hotel Parcel Improvements, the Office Parcel Improvements or the NH Parcel Improvements (as applicable) or the permitted renovation of such Improvements or if, by reason of settlement or shifting of such Improvements, any part of such Improvements, Hotel Owned Facilities, Office Owned Facilities or NH Owned Facilities (as applicable) encroaches or shall hereafter encroach upon any part of the Retail Parcel and (ii) the additional encroachments of the Retail Parcel Improvements, Office Parcel Improvements and Hotel Parcel Improvements located on the First Floor of the Building upon the NH Parcel, as depicted on **Exhibit C** attached hereto. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements are made in the same location that do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(i) **Hotel Owned Facilities, Office Owned Facilities or NH Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Hotel Owned Facilities, Office Owned Facilities or NH Owned Facilities (as applicable) in the Retail Parcel in their present locations or as otherwise specified in the Project Plans.

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## ARTICLE 5

### EASEMENTS BURDENING THE NH PARCEL

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

(a) NH Owner hereby grants, declares and creates the Easements described in this Article 5. The term "Grant" or "grant" as hereinafter used in this Article 5 describing Easements shall be deemed to mean "grant, declare and create." The Easements in this Article 5 shall bind and be enforceable against NH Owner and, as applicable, its successors, grantees and assigns.

(b) The Easements granted by this Article 5 shall, as applicable, bind and burden the NH Parcel, which shall for the purpose of this Article 5 be deemed to be the servient tenement. Where only a portion of the NH Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(c) Unless otherwise indicated, the Easements granted by this Article 5 are appurtenant to and benefit the Office Parcel, the Retail Parcel and the Hotel Parcel, as applicable. The Office Parcel, the Retail Parcel and the Hotel Parcel, as applicable, shall, for the purpose of this Article 5, be deemed to be the dominant tenements.

(d) In exercising an Easement granted under this Article 5, Office Owner, Retail Owner or Hotel Owner (as applicable) shall: (i) have the right to ingress and egress over, through and upon the NH Parcel to the extent necessary to exercise the rights granted by such Easement; and (ii) minimize the impact of its exercise on NH Owner and Occupants of the NH Parcel, taking into consideration the impact of any disruption on NH Owner and such Occupants and business operations in the NH Parcel. Office Owner, Retail Owner and Hotel Owner acknowledge that a hotel will be operating within the NH Parcel and, accordingly, in exercising their respective easement rights contemplated herein, Office Owner, Retail Owner and Hotel Owner shall account for the unique aspects and needs of such hotel use (for example, if Office Owned Facilities or Hotel Owned Facilities require Maintenance in a non-Emergency Situation that must be undertaken within hotel rooms, Office Owner or Hotel Owner (as applicable) shall coordinate such Maintenance with NH Owner and use commercially reasonable efforts to cause such Maintenance to be performed during times when such rooms are not occupied; and if Maintenance in an Emergency Situation is required in hotel rooms, Office Owner or Hotel Owner (as applicable) shall make commercially reasonable efforts to coordinate such Maintenance with NH Owner, taking into account the nature of the Emergency Situation). Notwithstanding anything to the contrary contained herein, in the event that any access, use, repair, Maintenance or other right pursuant to which an Easement is granted under this Article 5 may be effectively exercised without entering the NH Parcel (or any Owner's Parcel other than the performing Owner's Parcel), or conducting any invasive procedures within the NH Parcel (or any Owner's Parcel other than the performing Owner's Parcel), or otherwise disrupting the use, operation or rights of Occupants within the NH Parcel (or any Owner's Parcel other than the performing

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Owner's Parcel), Office Owner, Retail Owner or Hotel Owner (as applicable) shall use commercially reasonable efforts to exercise such rights without entering into, conducting any invasive procedures within or otherwise disrupting the use of the NH Parcel or NH Owner or Occupants of any portion of the NH Parcel (for example, and in no way limiting the foregoing, if Office Owner can reasonably access a Utility Facility either from the NH Parcel or the Office Parcel, the Office Owner shall perform such work, and utilize such access, from the Office Parcel).

(e) NH Owner may, (i) in connection with the Maintenance of the NH Parcel upon not less than forty-eight (48) hours notice to Office Owner, Retail Owner or Hotel Owner (as applicable); (ii) in an Emergency Situation; (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of the NH Parcel or (iv) in connection with NH Owner's security measures (which shall be coordinated with the security measures of Office Owner, Retail Owner and Hotel Owner): temporarily prevent, close off or restrict the ingress, egress or use in, over, on, across and through any of the Easements granted under this Article 5, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement.

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

(g) Hotel Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Hotel Owner's rights granted herein.

(h) Office Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Office Owner's rights granted herein.

(i) Retail Owner shall be responsible, at its sole cost and expense, for repairing any damage to any portion of the Building, including, without limitation, any Facilities, resulting from the exercise of Retail Owner's rights granted herein.

**5.2 Grant of Easements by NH Owner in Favor of Office Owner, Retail Owner and Hotel Owner.** Unless otherwise indicated, the following Easements in, to, under, over, upon and through the NH Parcel in favor of Office Owner, Retail Owner, Hotel Owner and their respective Permittees, the Office Parcel, the Retail Parcel and the Hotel Parcel are hereby granted; provided, however, the interest of each such Owner in such Easements shall be limited to the extent reasonably necessary to permit the use, operation and Maintenance of such Owner's Parcel.

(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time be enacted by NH Owner or its Occupants (as applicable), a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the NH Parcel as are reasonably necessary or



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desirable to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable), including without limitation, the Office Owned Facilities, the Retail Owned Facilities or the Hotel Owned Facilities (as applicable); (ii) permit Hotel Owner and Office Owner to provide to the NH Parcel those services to be performed by such Owner as described in Article 7 of this Agreement; (iii) perform (x) all construction work in the Retail Parcel in connection with Retail Owner's construction of the Retail Parcel Improvements; provided, however, that such construction easement shall be temporary and shall automatically terminate upon completion of the Retail Parcel Improvements, (y) Alterations, pursuant to Article 16 hereof, and (z) restoration after damage or destruction, pursuant to Article 11 hereof, or condemnation, pursuant to Article 15 hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, stairways, entryways, escalators and other passageways (i) at all times the same are made available for use by the public by NH Owner, and at all times (whether or not open to the public) with respect to those stairways, elevator shafts and other Facilities providing access to the Hotel Parcel, the Retail Parcel or the Office Parcel (as applicable); (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by the Owners. Those portions of the LaSalle Street Entrance Area owned by NH Owner shall remain open for the use of Office Owner, Retail Owner and their respective Occupants on a twenty-four (24) hours a day/seven (7) days a week basis. Without limiting the foregoing, if and to the extent that any of the Easement rights set forth in Section 5.2 require access to areas other than the ground floor of the Building, such Easement rights shall be deemed to include Easement rights to use the elevators and stairwells in the NH Parcel to access such areas of the NH Parcel as are reasonably necessary to exercise such Easement rights. Notwithstanding anything set forth herein to the contrary, other than in an Emergency Situation, (A) Retail Owner shall have no right to access (i) any portion of the NH Parcel above the ground floor of the Building or (ii) any stairwell or elevator located in the NH Parcel other than as reasonably required to access the roof in connection with the installation and Maintenance of Retail Communications Facilities (as defined in Exhibit 5.2(i) hereof), (B) Hotel Owner shall have the right to use the LaSalle Street Entrance Area solely for the following purposes (i) allowing hotel guests reasonable access to (x) the Hotel Passenger Elevators -- LaSalle (as hereafter defined) and stairs owned by Hotel Owner in the southeast corner of the Building and (y) the hotel lobby located on the Hotel Parcel through a door presently located in the existing retail corridor portion of the NH Parcel, as long as open access to the Hotel lobby is provided through such door; and (ii) as reasonably required to perform Maintenance to the Hotel Passenger Elevators -- LaSalle and related Facilities; and (C) Hotel Owner shall have no right to use the Wells Street entrance to the Building.

(b) **Use and Maintenance of Pipes and Facilities.** A non-exclusive easement for Persons, material and equipment over, on, across and through such portions of the NH Parcel as are reasonably necessary for the intended use and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of all

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Pipes and Facilities, if any, which are (i) located in the NH Parcel (including Office Owned Facilities, Retail Owned Facilities and Hotel Owned Facilities), and (ii) connected to Pipes or Facilities located in the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable) which provide or are reasonably necessary to provide the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable) with any Utility Service or other service reasonably necessary or desirable to the operation of the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable). The aforesaid easement expressly includes the right of Hotel Owner to connect to and use the Pipes designated on the Project Plans for ventilation and exhaust in connection with (i) restaurant and other food service uses and (ii) hotel plumbing.

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

(d) **Utility Services**. A non-exclusive easement (and if requested by the applicable Utility Company, a non-exclusive easement to such Utility Company) for Utility Service purposes required by the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable) and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable) in those areas of the NH Parcel where such Utility Facilities are currently located. If, at any time, it becomes necessary for the operation of the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable) to relocate or add to utility easements (including installation of Utility Facilities) other than where located in the NH Parcel in order to provide or upgrade required Utility Service to the Office Parcel, the Retail Parcel or the Hotel Parcel (as applicable), NH Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by Office Owner, Retail Owner or Hotel Owner (as applicable) and NH Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the NH Parcel for the purposes for which the NH Parcel is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, and do not unduly inconvenience the Owner or Occupant(s) of, or cause any business interruption within, the NH Parcel and (2) Office Owner, Retail Owner or Hotel Owner (as applicable) shall pay the reasonable costs and expenses incurred by NH Owner in connection with granting such easement. NH Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel, or otherwise adversely affect the Utility Services to any other Parcel, (ii) NH Owner shall not change any points of connection between such Utility Facilities and the other Parcels, unless NH Owner pays all costs of relocating such connection points that are incurred by Office Owner, Retail Owner or Hotel Owner (as applicable) and (iii) NH Owner shall promptly apprise Office Owner, Retail Owner or Hotel Owner (as applicable) regarding the new location of any easements and provide such Owner at least ten (10) days written notice prior to relocating any utility easements. Notwithstanding anything set forth herein to the contrary,

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NH Owner shall not be deemed unreasonable if it fails to grant a relocation of an existing Easement, or a new Easement, if prohibited by the terms of any lease of the NH Parcel or any portion thereof then in effect or if NH Parcel's Mortgage will not consent to such relocation.

(e) **Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the NH Parcel Improvements for the support of the Office Parcel Improvements, the Retail Parcel Improvements or the Hotel Parcel Improvements (as applicable) and the Office Owned Facilities, the Retail Owned Facilities or the Hotel Owned Facilities (as applicable) and the Maintenance of such Structural Supports and the Office Owned Facilities, the Retail Owned Facilities or the Hotel Owned Facilities (as applicable); provided that Office Owner, Retail Owner or Hotel Owner (as applicable) shall not do or permit to be done any act that would adversely affect the structural safety or integrity of Structural Supports or any portion of the NH Parcel Improvements.

(f) **Encroachments.** An exclusive easement permitting the existence of (i) encroachments of six (6) inches or less if such encroachments result from the construction of any of the Office Parcel Improvements, the Retail Parcel Improvements or the Hotel Parcel Improvements (as applicable) or the permitted renovation of such Improvements or if, by reason of settlement or shifting of such Improvements, any part of such Improvements, Office Owned Facilities, Retail Owned Facilities or Hotel Owned Facilities (as applicable) encroaches or shall hereafter encroach upon any part of the NH Parcel; and (ii) the additional encroachments of the Hotel Parcel Improvements and Office Parcel Improvements located on the First Floor of the Building upon the NH Parcel, as depicted on **Exhibit C** attached hereto. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements are made in the same location that do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(g) **Office Owned Facilities, Retail Owned Facilities and Hotel Owned Facilities.** A non-exclusive easement permitting the existence, a factment, use and Maintenance of Office Owned Facilities, Retail Owned Facilities or Hotel Owned Facilities (as applicable) in the NH Parcel in their present locations or as otherwise specified or depicted in the Project Plans.

(h) **Use of Passenger/Freight Elevators and Hotel Elevator Lobby.**

(i) A non-exclusive easement for passenger elevator use as necessary or desirable for Office Owner, Retail Owner, Hotel Owner and their respective Permittees to perform Maintenance pursuant to this Agreement (or pursuant to separate agreements between the Owners) or in an Emergency Situation and for no other purposes.

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(ii) A non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, the elevator shafts, rails, equipment and other Facilities related thereto, located within the NH Parcel as are necessary for the use, operation and Maintenance of freight and passenger elevators, elevator cabs, motors, cables, components and other Facilities relating to such freight and passenger elevators located on the Office Parcel or the Hotel Parcel, as depicted on the Project Plans.

(iii) A non-exclusive easement in favor of Hotel Owner for ingress and egress on, over, across and through the LaSalle Street entrance and lobby area to allow guests to access Elevator Nos. 13, 14, 15, 16 17 and 18 located in the Southeast corner of the Building, as depicted on the Project Plans (the "Hotel Passenger Elevators - LaSalle"). NH Owner shall be solely responsible for maintaining the elevator lobby area immediately adjacent to such elevators.

(i) **Rooftop Communications Facilities.** To and for the benefit of Hotel Owner, Retail Owner and Office Owner (and any Utility Company or third party communications provider, if applicable) and not for the purpose of providing communication or other services to the public, a non-exclusive easement for the installation, use and Maintenance of Communications Facilities on the roof of the Building and Facilities within the NH Parcel serving the same, which are currently available or become available through technological advances, in accordance with the provisions of **Exhibit 5.2(i)**. In connection therewith, Hotel Owner, Retail Owner and Office Owner shall also have a non-exclusive easement for passenger elevator use for the limited purpose of accessing the roof of the Building in order to install, use and Maintain such Communications Facilities. Notwithstanding the foregoing, Hotel Owner, Retail Owner and Office Owner shall not have any right to (A) install any Facilities on the roof of the Building other than Communications Facilities and Facilities serving the same, or (B) use the roof of the Building for any purpose other than as expressly set forth in this Section 5.2(i). The portion of the roof surface which are to be used for Hotel Communications Facilities shall (i) not exceed 5,000 square feet and (ii) be located and installed in a manner that will (A) be reasonably accessible by safe means (B) protect the safety of Persons entering upon the roof, the integrity of the roof and the appearance of the Building, and (C) provide line-of-sight communications to earth-based communications towers and Building antennas and satellite broadcasts. The location of all Communications Facilities shall be subject to the reasonable approval of NH Owner, taking into account the reasonable input of the other Owners. Hotel Owner's, Retail Owner's and Office Owner's exercise of the foregoing easement rights shall be subject to and in accordance with rules and regulations established by NH Owner from time to time regarding, among other things, (i) the qualifications of contractors authorized to install or perform Maintenance of such Communications Facilities, (ii) procedures to be followed in connection with the installation and Maintenance of such Communications Facilities in order to ensure that (A) the integrity of the roof is maintained, (B) Communications Facilities are appropriately affixed to the roof to prevent injury to persons and damage to property, (C) such installation is completed in accordance with the City's Municipal

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Code, and (D) the appearance of the Building is not adversely affected. Such rules and regulations shall be enforced in a non-discriminatory manner.

(j) **Adams Street Exterior Lighting**. Certain exterior lighting and related Facilities (collectively, the "**Adams Street Exterior Lighting**") are installed on the NH Façade along Adams Street, which Adams Street Exterior Lighting services the Hotel Parcel. To and for the benefit of the Hotel Parcel and Hotel Owner, in compliance with applicable Laws, Hotel Owner is hereby granted the following easement rights to install, affix, repair, replace and Maintain such Adams Street Exterior Lighting on the NH Façade along Adams Street in the locations determined by Hotel Owner in its reasonable discretion. The easement rights reserved in the immediately preceding sentence shall be perpetual and exclusive and shall include all necessary easement rights to install, connect and Maintain any and all necessary cables, Pipes, lines, conduits and other Facilities necessary for the supply of power to any Adams Street Exterior Lighting being installed pursuant to this Section. The foregoing easement rights shall include the right to enter upon the Property, the Building and all components thereof (including, without limitation, the exterior walls of the Building and scaffolding erected adjacent to the Building), to Maintain such Adams Street Exterior Lighting Facilities, or to modify or change such Adams Street Exterior Lighting, from time to time, as well as the right to construct scaffolding or other apparatus necessary or appropriate to exercise the foregoing rights. The size, location, type, style, content, appearance and design of the Adams Street Exterior Lighting contemplated in this Section shall be determined by Hotel Owner in its reasonable discretion; provided, however, such Adams Street Exterior Lighting shall, in all respects, fully comply with (i) the requirements of the Preservation Easement, (ii) the Landmarks Ordinance Requirements, (iii) the Federal Historic Preservation Requirements, (iv) the requirements of this Agreement, (v) all other applicable Laws, and (vi) the Project Quality Standards. Hotel Owner shall Maintain the Adams Street Exterior Lighting in good condition and repair, shall pay for all utilities consumed in connection therewith and shall comply with all Laws applicable thereto, including obtaining and Maintaining all permits and licenses, all at Hotel Owner's sole expense.

## ARTICLE 6

### **INDEMNIFICATION**

6.1 **Indemnity by Owners**. Without limiting any other provision hereof, but subject to the provisions of Section 23.1 hereof, each Owner (hereinafter in this Section 6.1, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless each other Owner and such other Owner's partners, beneficiaries, stockholders, members, managers, directors, officers, agents, employees and attorneys and the respective successors and assigns of all such partners and parties and any Mortgagees (hereinafter in this Section 6.1, collectively, the "**Indemnitee**") for losses, liabilities, damages, judgments, reasonable costs and expenses including, without limitation, reasonable legal fees incurred by Indemnitee arising out of any claim and any deductibles required to be paid under applicable insurance policies, including any actions or proceedings against Indemnitee by or on

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behalf of any person, firm, corporation or governmental authority, other than any Indemnitee, arising out of (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 activities therein, (ii) the Indemnifying Owner's use, exercise or enjoyment of an Easement or Facility (shared or otherwise) or (iii) the Indemnifying Owner's failure to perform its Maintenance or other obligations hereunder. In no event shall the Indemnifying Owner have any indemnification obligation to the Indemnitee (a) to the extent occasioned by the negligent or wrongful acts or omissions of any Indemnitee or its Permittees, or (b) for any casualty loss to property to the extent of any insurance proceeds available under any insurance policy carried by the Indemnitee. The indemnification obligations of the Indemnifying Owner hereunder shall not include or be deemed to extend to the Permittees of the Indemnitee. If any action or proceeding is brought against any Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from such Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be deemed to be reasonably satisfactory to such Indemnitee. The Indemnitee shall cooperate with the Indemnifying Owner in the defense of such matter, at the Indemnifying Owner's expense. The Indemnitee shall not enter into any agreement or settlement with respect to such matters while the Indemnifying Owner is defending or contesting such actions, without the Indemnifying Owner's prior written approval, which approval shall not be unreasonably withheld. Any such agreement or settlement without the Indemnifying Owner's approval shall release the Indemnifying Owner from its obligation to indemnify the Indemnitee with respect to such matter. In the event of a final and non-appealable determination of any Indemnitee's negligence or wrongful acts, the Indemnifying Owner shall be entitled to receive indemnification and repayment for all actual out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) associated with defending an action resulting from an Indemnitee's negligence or wrongful acts or otherwise paid to the Indemnitee. Notwithstanding anything to the contrary contained in this Article 6, in no event shall any Mortgagee have any obligation as an Indemnifying Owner hereunder unless at the time of the occurrence of the event giving rise to the indemnification obligation such Mortgagee was a mortgagee-in-possession of the Parcel previously owned by such Mortgagee's borrower and such Mortgagee was then acting in the capacity as the Owner of such Parcel.

## ARTICLE 7

### SERVICES PROVIDED BETWEEN OWNERS

7.1 Services to Office Owner, Retail Owner and NH Owner by Hotel Owner. Hotel Owner shall furnish or cause to be furnished the following services to Office Owner, Retail Owner and NH Owner when, as, and if required or requested by Office Owner, Retail Owner and NH Owner:

(a) Wastewater/Sanitary Sewer. Maintenance of Facilities providing sanitary sewer drainage, upon the terms and conditions set forth in Exhibit 7.1(a).

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- (b) **Stormwater Drainage Facilities**. Maintenance of Facilities providing storm water drainage, upon the terms and conditions set forth in **Exhibit 7.1(b)**.
- (c) **Fire Pump, Combination Standpipe and Life-Safety Monitoring System**. Maintenance of Facilities providing the fire pump, combination standpipe and life-safety system, upon the terms and conditions set forth in **Exhibit 7.1(b)**.
- (d) **Hotel Shared Space**. Maintenance of the Hotel Shared Space, as defined in, and upon the terms and conditions set forth in **Exhibit 7.1(d)**.
- (e) **Emergency Generator**. Provision of emergency electricity and Maintenance of Facilities providing emergency electricity, upon the terms and conditions set forth in **Exhibit 7.1(e)**.
- (f) **Loading Facilities**. Hotel Owner shall cause to be provided trash removal service and shall be responsible for Maintenance of the Loading Facilities (as defined in Section 2.2(d) hereof), upon the terms and conditions set forth in **Exhibit 7.1(f)**.
- (g) **Loading Dock Exterior Lighting**. Provision of electricity to and Maintenance of the Exterior Lighting for the Loading Dock (the "***Loading Dock Exterior Lighting***"), upon the terms and conditions set forth in **Exhibit 7.1(g)**.
- (h) **Window Washing**. Washing of the exterior face of exterior windows upon the terms and conditions set forth in **Exhibit 7.1(h)**. Notwithstanding the foregoing, Retail Owner or NH Owner may as a supplement to such window washing services provided by Hotel Owner, wash its ground floor exterior windows as often as Retail Owner or NH Owner (as applicable) deems necessary in its sole discretion, provided that (i) such supplemental window washing is performed by or on behalf of Retail Owner or NH Owner (as applicable) at its sole expense, and (ii) unless required by Law, in no event shall scaffolding or other apparatus be erected in order to perform such supplemental window washing work that would block, obscure or obstruct any street level entryway to the Building.
- (i) **Maintenance of Sidewalks and Snow Removal**. Maintenance of all sidewalks along LaSalle Street, Adams Street, Wells Street and vacated Quincy Court, adjacent to the Building (collectively, the "***Sidewalks***") and removal of snow, ice and debris from such Sidewalks upon the terms and conditions set forth in **Exhibit 7.1(i)**. Notwithstanding anything set forth herein to the contrary, NH Owner and Retail Owner may elect to perform maintenance and snow, ice and debris removal for the Sidewalks along LaSalle Street and the east half of vacated Quincy Court by providing written notice of such election to Hotel Owner. Upon Hotel Owner's receipt of such notice, NH Owner or Retail Owner (as applicable) shall become obligated to perform maintenance and snow, ice and debris removal for the Sidewalks along LaSalle Street and the east half of vacated Quincy Court and Hotel Owner shall be relieved of such obligation, subject to Hotel Owner's obligation to reimburse the performing owner for Hotel's Owner's share of the cost of such work in accordance with the Approved Division and as otherwise set

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forth in **Exhibit 7.1(i)** hereof. Regardless of who performs such Maintenance, the costs therefore shall be shared by the Owners in accordance with **Exhibit 7.1(i)** hereof.

(j) **Façade and Exterior Window Maintenance.** Maintenance of the Façade and exterior windows upon the terms and conditions set forth in **Exhibit 7.1(i)**.

(k) **Shared Freight Elevator.** Provision of elevator service and Maintenance of the Shared Freight Elevator, upon the terms and conditions set forth in **Exhibit 7.1(k)**.

(l) **Domestic (City) Water.** Maintenance of Facilities providing delivery of domestic (City) water, upon the terms and conditions set forth in **Exhibit 7.1(l)**.

(m) **Chilled Water.** Maintenance of Facilities providing chilled water, upon the terms and conditions set forth in **Exhibit 7.1(m)**.

(n) **Boiler System.** Maintenance of boiler system, upon the terms and conditions set forth in **Exhibit 7.1(n)**.

(o) **Other Services.** Hotel Owner shall furnish or cause to be furnished other services to Office Owner, Retail Owner and NH Owner reasonably required or requested by Office Owner, Retail Owner and NH Owner for normal business operations of the Office Parcel, the Retail Parcel and the NH Parcel, respectively, on terms and conditions mutually acceptable to the Owners, provided that each party agrees not to unreasonably withhold its consent to such terms and conditions. Once determined, the Owners may amend this Agreement to incorporate the terms and conditions agreed to by such Owners regarding these services.

Notwithstanding the above, Office Owner, Retail Owner and/or NH Owner may, at their sole cost and expense, supplement the services then being provided by Hotel Owner; provided, however, that any such supplementing of services by Office Owner, Retail Owner or NH Owner (as applicable) shall be (i) performed in a manner so as not to unreasonably interfere with the services being provided by Hotel Owner and (ii) provided at the sole expense of Office Owner, Retail Owner or NH Owner (as applicable), and the provision of any such supplemental services which involve any Alterations shall be subject to the provisions of Article 16 hereof.

## 7.2 **Services to be Provided by Office Owner.**

(a) **Services to Hotel Owner, Retail Owner and NH Owner.** Office Owner shall furnish or cause to be furnished the following services to Hotel Owner, Retail Owner and NH Owner when, as, and if required or requested by Hotel Owner, Retail Owner and NH Owner:

(i) **Office Shared Space.** Maintenance of Office Shared Space, as defined in, and upon the terms and conditions set forth in **Exhibit 7.1(d)**.

(ii) **Other Services.** Office Owner shall furnish or cause to be furnished other services to Hotel Owner, Retail Owner and NH Owner



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reasonably required or requested by Hotel Owner, Retail Owner and NH Owner for normal business operations of the Hotel Parcel, the Retail Parcel and the NH Parcel, respectively, on terms and conditions mutually acceptable to the Owners, provided that each party agrees not to unreasonably withhold its consent to such terms and conditions. Once determined, the Owners may amend this Agreement to incorporate the terms and conditions agreed to by such Owners regarding these services.

(b) **Services to Retail Owner.** Office Owner shall furnish or cause to be furnished the following services to Retail Owner when, as, and if required or requested by Retail Owner:

(i) **Domestic (City) Water.** Maintenance of Facilities, if any, are provided in accordance with the Project Plans, and providing delivery of domestic (City) water, upon the terms and conditions set forth in **Exhibit 7.1(l).**

(ii) **Chilled Water.** Maintenance of Facilities providing chilled water, upon the terms and conditions set forth in **Exhibit 7.1(m).**

Notwithstanding the above, Hotel Owner, Retail Owner and NH Owner may, at their sole cost and expense, supplement the services then being provided by Office Owner; provided, however, that any such supplementing of services by Retail Owner, Office Owner or NH Owner (as applicable) shall be (i) performed in a manner so as not to unreasonably interfere with the services being provided by Office Owner and (ii) provided at the sole expense of Hotel Owner, Retail Owner or NH Owner (as applicable) and the provision of any such supplemental services by Hotel Owner, Retail Owner or NH Owner (as applicable) which involve any Alterations shall be subject to the provisions of Article 16 hereof.

### 7.3 **Services to be Provided by NH Owner.**

(a) **Services to Hotel Owner, Retail Owner and Office Owner.** NH Owner shall furnish or cause to be furnished the following services to Hotel Owner, Retail Owner and Office Owner when, as, and if required or requested by Hotel Owner, Retail Owner and Office Owner:

(i) **NH Shared Space.** Maintenance of NH Shared Space, as defined in, and upon the terms and conditions set forth in **Exhibit 7.1(d).**

(ii) **Roof Maintenance.** Maintenance of the roof of the Building (excluding, however, Maintenance of the Hotel Vaulted Roof, which shall be solely the responsibility of Hotel Owner), upon the terms and conditions set forth in **Exhibit 7.3(a)(ii).**

(iii) **LaSalle Street Exterior Lighting.** Provision of electricity to and Maintenance of the exterior lighting for the Façade on LaSalle Street (the "**LaSalle Street Exterior Lighting**"), upon the terms and conditions set forth in **Exhibit 7.3(a)(iii).**

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(iv) **Other Services.** NH Owner shall furnish or cause to be furnished other services to Hotel Owner, Retail Owner and Office Owner reasonably required or requested by Hotel Owner, Retail Owner and Office Owner for normal business operations of the Hotel Parcel, the Retail Parcel and the Office Parcel, respectively, on terms and conditions mutually acceptable to the Owners, provided that each party agrees not to unreasonably withhold its consent to such terms and conditions. Once determined, the Owners may amend this Agreement to incorporate the terms and conditions agreed to by such Owners regarding these services.

Notwithstanding the above, Hotel Owner, Retail Owner and Office Owner may, at their sole cost and expense, supplement the services then being provided by NH Owner; provided, however, that any such supplementing of services by Hotel Owner, Retail Owner or Office Owner (as applicable) shall be (i) performed in a manner so as not to unreasonably interfere with the services being provided by NH Owner; and (ii) provided at the sole expense of Hotel Owner, Retail Owner or Office Owner (as applicable) and the provision of any such supplemental services by Hotel Owner, Retail Owner or Office Owner (as applicable) which involve any Alterations shall be subject to the provisions of Article 16 hereof.

#### 7.4 **Services to be Provided by Retail Owner.**

(a) **Services to Hotel Owner, Retail Owner and NH Owner.** Retail Owner shall furnish or cause to be furnished the following services to Hotel Owner, Office Owner and NH Owner when, as, and if required or requested by Hotel Owner, Office Owner and NH Owner:

(i) **Shared Spaces.** Maintenance of Retail Shared Space, as defined in, and upon the terms and conditions set forth in **Exhibit 7.1(d).**

(ii) **Other Services.** Retail Owner shall furnish or cause to be furnished other services to Hotel Owner, Office Owner and NH Owner reasonably required or requested by Hotel Owner, Office Owner and NH Owner for normal business operations of the Hotel Parcel, the Office Parcel and the NH Parcel, respectively, on terms and conditions mutually acceptable to the Owners, provided that each party agrees not to unreasonably withhold its consent to such terms and conditions. Once determined, the Owners may amend this Agreement to incorporate the terms and conditions agreed to by such Owners regarding these services.

Notwithstanding the above, Hotel Owner, Office Owner and NH Owner may, at their sole cost and expense, supplement the services then being provided by Retail Owner; provided, however, that any such supplementing of services by Hotel Owner, Office Owner or NH Owner (as applicable) shall be (i) performed in a manner so as not to unreasonably interfere with the services being provided by Retail Owner and (ii) provided at the sole expense of Hotel Owner, Office Owner or NH Owner (as applicable) and the provision of any such supplemental services

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by Hotel Owner, Office Owner or NH Owner (as applicable) which involve any Alterations shall be subject to the provisions of Article 16 hereof.

7.5 **Obligation to Furnish Services.** The Owners responsible for furnishing services hereunder shall furnish all services required under this Article 7 in a manner consistent with the Project Quality Standards. Each Owner shall use reasonable diligence in performing the services required as set forth in this Article 7 but shall only be liable under this Article 7 for interruption or inadequacy of service and loss or damage to property or business (including any consequential damages) arising out of such interruption or inadequacy if such interruption or inadequacy results from its gross negligence or willful misconduct in performing such services. Each Owner reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation.

7.6 **Payment for Services.** Payment for services rendered pursuant to this Article 7 and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of **Exhibit 7.8** attached hereto and made a part hereof. Notwithstanding the foregoing, in the event that a shared Utility Facility must be upgraded to accommodate the increased capacity needs of any Owner, such Owner shall pay the full costs of such upgrade.

7.7 **Failure to Perform Services.**

(a) If an Owner shall fail to perform as required by the terms and conditions of this Article 7 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. Notwithstanding the foregoing, if an Owner fails to perform the services it is required to provide in this Article 7 in an Emergency Situation, the Creditor Owner shall have the right to perform such services immediately until such time as the Owner responsible for providing such services provides the same.

(b) If a dispute exists as to whether an Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 13 if not resolved within ten (10) days after the dispute arises.

7.8 **Data Unavailable from Metering.** Where the allocation of the cost of a service under Article 7 is based on usage recorded by meters, and if at any time the actual allocation of cost of service based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the Owner performing such service shall in good faith make such reasonable determination of costs based on historical data and usage, using such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the other Owner in detail of its determination of estimated usage

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and the method for such determination at the time such Owner sends a Projection Notice or Statement (as such terms are defined in Exhibit 7.8) or statement of Net Capitalized Cost of Replacement under Exhibit 7.8 relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties for such period; provided further, however, if the Owner receiving such notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then either Owner may submit the question to the Architect or other expert agreed to by the parties for its advice. The Architect or other expert agreed to by the parties shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect or other expert.

## ARTICLE 8

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

#### 8.1 Liens.

(a) Each Owner (the "Liening Owner") shall remove, within thirty (30) days after the filing thereof by a third party that is not an Owner, any mechanics', materialmen's, manager's or broker's or any other similar lien arising by reason of the acts of the Liening Owner, its agents and contractors or any work or materials or services for which the Liening Owner or its agents or contractors has contracted (i) against another Owner's portion of the Property, or (ii) against its own portion of the Property, if the existence or foreclosure of such lien against its own portion of the Property, would adversely affect any other Owner (such other Owner in (i) or (ii) being the "Impacted Owner").

(b) Notwithstanding the foregoing, the Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if, within said thirty (30) day period, the Liening Owner:

(i) shall in good faith diligently proceed to contest the same by appropriate actions or proceedings and shall give written notice to the Impacted Owners of its intention to contest the validity or amount of such lien; and

(ii) shall deliver to the Impacted Owners either: (A) cash or a surety bond from a responsible surety company reasonably acceptable to the Impacted Owner(s) in an amount equal to one hundred twenty percent (120%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (B) other security or indemnity reasonably acceptable to each

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Impacted Owner's title insurance company and the Impacted Owner(s). An endorsement by each Impacted Owner's title insurance company over such lien claim to each Impacted Owner's title insurance policy shall be deemed an indemnity reasonably acceptable to the Impacted Owner(s), and shall satisfy the requirements of clause (B) above.

(c) In any event, a Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure on the Parcel or Owned Facilities of the Impacted Owner(s). If the Liening Owner fails to comply with the foregoing provisions of this Section 8.1, thereby becoming a Defaulting Owner, the Impacted Owner(s), 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 Section 8.1.

(d) Any Owner performing any work required or provided for under this Agreement shall ensure that its construction contracts include a provision (i) acknowledging the separate ownership of the Parcels or (ii) waiving the right to file a lien or claim against a Parcel other than the Parcel or Parcels with respect to which the work was done, all in accordance with Section 15.4 of this Agreement.

## 8.2 Compliance With Laws.

(a) Each Owner, their respective Parcels and Improvements (including any and all exterior signage on any portion of the Property) shall comply at all times with all applicable Laws, including any obligation to maintain vault or sidewalk permits or licenses, public way permits, or other permits or licenses. Hotel Owner 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 the Property (including, but not limited to, any public way or other permits required for the Hotel entryway Facilities). Hotel Owner shall have the sole and exclusive use of any such underground vault areas and shall be entitled to all fees and charges assessed to any party in connection with the use of any such vault area. Office Owner, Retail Owner and NH Owner shall not be entitled to utilize any such vault area or seek to obtain any license for use of such vault areas without the prior written consent of Hotel Owner. Retail Owner and NH Owner may seek to obtain, each at its sole cost and expense, a permit or license for use of the sidewalk on the street level immediately adjacent to the Retail Parcel or the NH Parcel (as applicable) (including, but not limited to, LaSalle Street and Quincy Place) for an outdoor café or similar retail operations.

(b) Each Owner shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property, or any portion thereof, or

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the requirements of any insurance coverage on any other Owner's portion of the Property if noncompliance by it with respect to its respective portion of the Property or any portion thereof would:

- (i) Increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by or on behalf of all Owners (unless the non-complying Owner pays all such increases), or
  - (ii) render any other Owner's portion of the Property uninsurable, or
  - (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring any other Owner's portion of the Property; and
- (c) Each Owner shall deliver to the other Owners, within ten (10) business days after receipt, a copy of any written report, citation or notice affecting or relating to compliance of the Property with Laws to the extent such report, citation or notice will have an impact on any other Owner's Parcel.

8.3 **Use.** The Hotel Parcel shall be used only for lawful uses, including, without limitation, as a first-class hotel, restaurant, ballroom facilities, meeting room facilities, catering, fitness center, spa, hotel offices, and back of house space, and for uses accessory thereto, shall be maintained at all times in a first-class manner and shall be at all times consistent with uses within other first class hotel and restaurant projects in the City of Chicago. The Office Parcel and the NH Parcel shall be used only for lawful uses, including without limitation, full or limited service hotel or any office and other lawful uses. The Retail Parcel shall be used only for lawful uses, including without limitation, first-class retail, commercial (including restaurant and other food service uses), full or limited service hotel or any office and other lawful uses. In any event, the use of each Parcel shall, at all times, be consistent with the Project Quality Standards. Notwithstanding the foregoing, any use of the Retail Parcel, the NH Parcel or the Hotel Parcel as a restaurant shall not entitle the Owner of such Parcel to install ventilation shafts or Facilities serving such restaurant through, or create any easement rights over or through, the other Parcels except as specified or depicted in the Project Plans, without the prior written consent of the applicable Owner.

#### 8.4 **Exterior Signage.**

- (a) Office Owner and NH Owner may install and Maintain all necessary or desirable tenant trade signage (i) on the NH Façade, Office Façade and Retail Façade, and (ii) and the Tablature Sign on the Hotel Façade in accordance with Section 2.2(e) hercof, provided that such signage is (i) is consistent with the Project Quality Standards, (ii) not made with paper and does not include flashing lights and (iii) in compliance with all applicable Laws; further provided, however, that the plans and specifications for NH Owner's LaSalle Street Plaque Sign shall be subject to the approval of the Retail Owner and the Hotel Owner, which approval shall not be unreasonably withheld, conditioned or

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delayed. NH Owner, Office Owner or their respective Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use such signs pursuant to this Section 8.4(a). Notwithstanding anything set forth herein to the contrary, in no event may Office Owner or NH Owner install signage on any portion of the Façade facing Adams Street.

(b) Retail Owner may install and Maintain all necessary and desirable tenant trade signage, provided that such signage is (i) within Retail Owner's storefront windows, (ii) consistent with the Project Quality Standards, (iii) not made with paper and does not include flashing lights and (iv) in compliance with all applicable Laws. Retail Owner or its Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install permits and displays pursuant to this Section 8.4(b).

(c) Subject to the Tablature Sign easement rights of NH Owner, pursuant to Section 2.2(e) hereof, Hotel Owner may install and Maintain signs on the Hotel Parcel Façade and the Adams Street Plaque Sign on the Retail Parcel, provided that such signage is (i) consistent with the Project Quality Standards, (ii) not made with paper and does not include flashing lights and (iii) in compliance with all applicable Laws; further provided, however, that the plans and specifications for the Adams Street Plaque Sign shall be subject to the approval of the Retail Owner and NH Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Hotel Owner or its Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use such signs pursuant to this Section 8.4(c). Notwithstanding anything set forth herein to the contrary, in no event may Hotel Owner install signage on any portion of the Façade facing LaSalle Street.

(d) Any and all signage permitted by this Section 8.4, must also comply with the following requirements (the "Signage Criteria"):

- (i) the Project Quality Standards;
- (ii) all exterior Building signs and awnings must comply with applicable Law;
- (iii) all signs and awnings must be installed, maintained and operated in a first-class manner; and
- (iv) all signs and awnings must be professionally installed, designed and fabricated.

8.5 **Environmental and Engineering Review.** Each Owner ("Inspecting Owner") shall have the right in certain instances listed below to obtain from an environmental engineer or an inspecting architect or engineer of the Inspecting Owner's choice and at the Inspecting Owners' own cost and expense, an audit, review, assessment or report (each referred to as a "Review") relating to any or all of the Project, which Review may include tests or inspections of the other Owners' Parcels, as part of such Review. The Inspecting Owner shall use reasonable

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efforts to minimize the disruption of the other Owners' operation of business or use in their Parcels and shall repair any damage to property of the other Owners caused by a Review. The instances when an Owner may obtain a Review necessitating tests or inspections of the other Owners' Parcels are:

- (a) if the Inspecting Owner has entered into or will enter into a contract to sell, lease, finance or refinance its Parcel (or any direct or indirect interest therein) in which a requirement of said contract is a Review; or
- (b) if the Inspecting Owner's then current or proposed Mortgagee has requested a Review; or
- (c) if a Review is required by Laws;
- (d) if the Inspecting Owner, in good faith, believes that another Owner may have breached the provisions of Section 8.2 as it relates to the matters which could be disclosed by a Review or that the Inspecting Owner may be adversely affected or subject to liability, as a result of matters which could be disclosed by a Review; or
- (e) in connection with a Mandatory Façade Inspection (as defined in Section 11.1(a)(ii)).

## ARTICLE 9

### REAL ESTATE TAXES

9.1 **Separate Real Estate Tax Bills.** Office Owner shall, with the cooperation of the other Owners, take all actions necessary to obtain from the Cook County Assessor (the "**Assessor**") as promptly as possible following the recording of this Agreement with the Recorder, separate real estate tax parcel identification numbers and separate real estate tax bills for the Office Parcel and the NH Parcel (the "**Tax Division Parcels**"). In the event that Office Owner has not filed an application with the Assessor for such tax division within thirty (30) days after the recording of this Agreement, NH Owner may, upon prior written notice to Office Owner, file such application on the Owner's behalf and otherwise exercise the rights of Office Owner under this Section 9.1. The cost of performing such division (including all legal and consulting fees associated therewith) shall be divided between Office Owner and NH Owner (each a "**Tax Division Owner**" and collectively, the "**Tax Division Owners**") as follows:

- (a) Office Owner: 80%; and
- (b) NH Owner: 20%.

(the "**Tax Division Allocation**"). If the Assessor or any Tax Division Owner requests information or advice from a Tax Division Owner to allocate the assessed valuation for land or improvements (other than information relating to income or expenses of a Tax Division Owner's property) the Tax Division Owners shall consult and reasonably cooperate with one another regarding such information and advice to be furnished to the Assessor or the requesting Tax



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Party (as applicable). If the Assessor or any other applicable governmental authority requires that the land be vertically subdivided in order to cause such division, (a) the Owners shall reasonably cooperate in connection with such vertical subdivision and (b) the cost of performing such vertical subdivision (including all legal and consulting fees associated therewith) shall be divided among the Owners in accordance with the Approved Division.

## 9.2 Payment of Real Estate Tax Bills.

(a) Allocation of Real Estate Taxes. At any time separate real estate tax bills are issued for any Tax Division Parcel, the Owners thereof shall pay the tax bill or bills allocable to such Tax Division Parcel before delinquent. Until the Tax Division Parcels are separately assessed and taxed, each Tax Division Owner shall pay a percentage of the total real estate taxes and special assessments levied by the Cook County Treasurer against the Tax Division Parcels, in the aggregate, before delinquent in accordance with the Tax Division Allocation.

(b) Payments of Taxes. Until the Tax Division Parcels are separately assessed and taxed, Office Owner shall notify NH Owner of the amount owed by such Owner, on account of real estate taxes, calculated pursuant to Section 9.2(a) above. Within fifteen (15) days after receipt of such tax bills, NH Owner shall deliver to Office Owner a check made payable to the Cook County Treasurer (in accordance with all requirements of the Cook County Treasurer in terms of form of payment) for its respective allocable share, as set forth in the foregoing paragraph, of all tax bills levied against the Tax Division Parcels. Office Owner shall forward such check, together with payment of Office Owner's allocable share of the tax bills, to the Cook County Treasurer and shall forward a copy of the paid receipt to NH Owner when received.

(c) Tax Protests. Until separate tax bills are obtained, Office Owner may on its own, and upon the reasonable good faith request of NH Owner, shall, in good faith and with reasonable diligence, attempt to obtain a reduced assessed valuation of the Tax Division Parcels, protest taxes or take other action for the purpose of reducing real estate taxes thereon with respect to any period that the Tax Division Parcels are not separately assessed and taxed. In such event, each Tax Division Owner shall reasonably cooperate in such attempt and shall share in the costs (including reasonable attorneys' fees) incurred in proportion to its respective share of the real estate taxes calculated as provided in Section 9.2(a) above. If it is anticipated that the Tax Division Owners will bear any fees of attorneys, appraisal fees or tax consultants, the fee arrangements in connection with the tax protest shall be subject to the written approval of the Tax Division Owners, which approval shall not be unreasonably withheld. Any tax refund received as a result of such action shall be apportioned between the Tax Division Owners based on the allocation percentages set forth in Section 9.2(a) hereof. Each Tax Division Owner shall have the independent right to protest taxes and other charges to the extent the same affect only such Tax Division Owner's portion of the Tax Division Parcels, at any time such portions of the Tax Division Parcels are separately assessed and taxed.

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(d) **Failure to Pay Real Estate Taxes.** If any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 9, and the failure to pay same results in the imposition of a lien on, or forfeiture or foreclosure of, any other Owner's portion of the Property, or subjects any other Owner to personal liability for this obligation, then the Creditor Owner may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, with interest thereon as hereinafter provided, and the Creditor Owner shall also have a lien against the Defaulting Owner's portion of the Property in accordance with Article 12 hereof.

(e) **Reference to Taxes in Leases or Contracts.** For purposes of this Agreement and any documents or instruments, such as leases for space in any of the Parcels referring to the allocation of real estate taxes pursuant to this Agreement, the real estate taxes allocated to a portion of the Building shall mean those taxes assessed and payable with respect to such portion of the Building, as provided in this Article 9.

## ARTICLE 10

### INSURANCE

10.1 **Project Insurance.** Commencing on the date of this Agreement, Hotel Owner shall procure, on behalf of all Owners and the entire Project, and shall at all times thereafter maintain all of the insurance (collectively, the "**Project Insurance**") described in this **Section 10.1(a) and (b)**. In connection therewith, (a) Office Owner, NH Owner and Retail Owner hereby authorize and assign to Hotel Owner the right to so obtain such Project Insurance, and (b) Hotel Owner hereby assumes the obligation to so obtain such Project Insurance.

(a) **Core and Shell Property Insurance.**

(i) So called "All Risk" or Special Perils Form insurance as exists on the date of this Agreement covering the Core and Shell (as hereinafter defined) of the Building, including coverage against loss or damage by fire, collapse, lightning, tornado, hail, vandalism and malicious mischief, theft, sprinkler leakage, water damage, back-up of sewers and drains, bursting water mains, and against loss or damage by such other, further and additional risks as now embraced by the Special Perils forms, in each case (A) in an amount equal to 100% of their "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, land, foundations and footings); (B) containing an agreed amount endorsement with respect to the Core and Shell waiving all co-insurance provisions; (C) containing an endorsement that all covered losses will be paid on a replacement cost basis, which shall mean the actual cost to repair or replace the damaged property without deduction for depreciation; (D) providing for a deductible which is

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available and reasonable for such insurance, taking into account the intended mixed uses of the Project, and (E) including coverage in reasonable amounts and commercially available sub limits for terrorist acts (a separate policy covering acts of terrorists shall be required if coverage is not provided as part of the "All Risk" coverage required here-in), flood, earthquake, windstorm, other sudden and abnormal earth movement, debris removal and demolition of the undamaged portion of the Core and Shell and increased cost of construction due to the enforcement of laws regulating reconstruction. The Full Replacement Cost shall be ascertained upon the date of this Agreement and thereafter from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of any Owner or Mortgagee by a qualified appraiser or contractor selected by Hotel Owner with the cost of such appraisal paid by the Owners based on the Approved Division. Additional appraisals may be based on construction cost indices customarily employed in the appraisal profession or as accepted by the insurance company.

(ii) "Core and Shell" shall mean that portion of the Building consisting of the Façade; Common Walls, Floors and Ceilings; Structural Supports; the walls, floors and ceilings which comprise the basement levels of the Building; all exterior windows; all interior windows on the ground floor; Hotel Vaulted Roof and roof of the Building; elevators and elevator shafts; utility riser space; ventilation and exhaust shafts; all ground floor Improvements which are shared by two or more Owners and their respective Occupants, including but not limited to, entrances and exits, lobbies and hallways; all Facilities which are shared by two or more Owners; and all stairwells.

(b) **Boiler and Machinery Insurance.** To the extent included in the definition of the Core and Shell, Hotel Owner shall insure such boiler and machinery risks, on a comprehensive, blanket basis covering such Core and Shell consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis in and for an amount reasonably determined from time to time.

(c) **Allocation and Payment of Project Insurance Premiums.**

(i) The costs of such coverage shall be allocated among the Owners by the Hotel Owner, based upon the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

(ii) Hotel Owner shall provide written notice to Office Owner, NH Owner and the Retail Owner of the amount of the Project Insurance Premium owed by such Owners, calculated pursuant to **Section 10.1(c)(i)** above, which notice shall include written evidence of the cost of such premium. Within fifteen (15) days after receipt of such notice, Office Owner, NH Owner and Retail Owner shall each deliver to Hotel Owner a check made payable to the insurance carrier

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providing such Project Insurance (the "Project Insurance Carrier") for its respective allocable share of such Project Insurance Premium. Hotel Owner shall forward such checks, together with payment of Hotel Owner's allocable share of such Project Insurance Premium, to the Project Insurance Carrier and shall forward a copy of the paid receipt to the other Owners when received.

(d) **Copies of Policies; Certificate of Insurance.** Copies of all insurance policies for the coverages outlined in **Section 10.1** or binders with summaries of coverages afforded and evidencing renewal shall promptly be delivered to the Owners and their respective Mortgagees. Upon written request of an Owner or its Mortgagee, binders shall be replaced with certified full copies of the actual policies as soon as reasonably possible.

(e) **Insurance Provisions** Each policy described in **Section 10.1** hereof:

(i) shall provide that the knowledge or acts or omissions of any Mortgagee shall not invalidate the policy as against such Mortgagee or otherwise adversely affect the rights of such Mortgagee under any such policy;

(ii) shall insure as "additional insureds" each of the Owners and, as "mortgagees", their respective Mortgagees;

(iii) shall provide, by endorsement or otherwise, that the insureds shall have the right under the policy to waive in writing prior to a loss any or all rights of recovery against any party, for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase;

(iv) shall provide that all losses payable thereunder shall be paid to the Depository (to be disbursed to the Owners pursuant to the terms of this Agreement) in accordance with the terms of **Article 17** hereof, unless the Owners otherwise agree, subject to the consent of the Mortgagees; provided, however, if the loss does not exceed 5% of the total insured value of the Core and Shell and does not involve structural work, then the Owners shall designate the Hotel Owner or a qualified bank as the trustee of such losses;

(v) shall provide for a minimum of thirty (30) days' advance written notice (except for non-payment of premium which shall require 10 days notice) of the cancellation, nonrenewal or material modification thereof to Mortgagees and all insureds thereunder;

(vi) shall include a standard mortgagee endorsement; and

(vii) shall not include a co-insurance clause.

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(f) Notwithstanding anything set forth herein to the contrary, the Owners acknowledge that the existing property insurance policy for the Property (the "Existing Policy") with Affiliated FM (the "Existing Insurer"), which Existing Policy has been reviewed and approved by the Owners and their respective Mortgagees, shall remain in place from the date of this Agreement and shall be deemed to satisfy all of the Project Insurance requirements set forth in this Section 10.1, subject to the following:

(i) The Existing Policy shall be updated to (A) name the Hotel Owner as the Owner of the Hotel Parcel as an additional insured; (B) name the Office/Retail Owner as (x) the Owner of the Office Parcel and the Retail Parcel and (y) an additional insured; (C) name the NH Owner as the Owner of the NH Parcel as an additional insured and (D) name the Mortgagees as "mortgagees"; and

(ii) Upon the issuance of an Owner's individual property insurance policy in accordance with Sections 10.2(a) and 10.2(f)(iv) hereof, the coverage provided for Core and Shell under the Existing Policy shall be modified to:

(A) exclude such Owner's Owner Insured Property,

(B) include any New Core and Shell components of such Owner's newly constructed Improvements and Owned Facilities.

The Existing Policy, as modified under the aforesaid clause (B) shall comply with all of the terms of Section 10.1(a) through (d) hereof.

#### 10.2 Insurance to be Obtained by Individual Owners.

(a) **Property Insurance.** Commencing on the date of this Agreement, each Owner shall procure (preferably from the same insurer providing the Project Insurance), on behalf of such Owner's (i) Improvements and Owned Facilities (but excluding all such Improvements and Owned Facilities which are covered by the Core and Shell Property Insurance referenced in Section 10.1(a) and (b)), and (ii) personal property located in the Building (collectively, the "Owner Insured Property"), and shall at all times thereafter maintain, so called "All Risk" or Special Perils Form insurance as exists on the closing date of this Agreement covering such Owner Insured Property, including coverage against loss or damage by fire, collapse, lightning, tornado, hail, vandalism and malicious mischief, theft, sprinkler leakage, water damage, back-up of sewers and drains, bursting water mains, business interruption and loss of rents, and against loss or damage by such other, further and additional risks as now embraced by the Special Perils forms, in each case (A) in an amount equal to 100% of their "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, land, foundations and footings); (B) containing an agreed amount endorsement with respect to such Owner Insured Property waiving all co-insurance provisions; (C) containing an endorsement that all covered losses will be paid on a replacement cost basis, which shall mean the actual cost to repair or replace

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the improvements without deduction for depreciation; (D) providing for a deductible which is available and reasonable for such insurance and (E) including coverage in reasonable amounts and commercially available sub limits for terrorist acts (a separate policy covering acts of terrorists shall be required if coverage is not provided as part of the "All Risk" coverage required here-in), flood, earthquake, windstorm, other sudden and abnormal earth movement, debris removal and demolition of the undamaged portion of the Owner Insured Property and increased cost of construction due to the enforcement of laws regulating reconstruction.

(b) **Public Liability Insurance.** Each Owner shall insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury, or property damage occurring in, on, under, within, upon or about each Owner's respective Parcel, or as a result of operations on such Owner's Parcel (including contractual liability covering obligations created by this Agreement, including, but not limited to, indemnity obligations contained herein, if any), in all events for limits, of not less than combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for personal and bodily injury or property damage and with an amount of not less than \$10,000,000 of umbrella coverage.

(c) **Insurance Provisions.** Each policy described in **Section 10.2** hereof:

(i) shall provide that the knowledge or acts or omissions of any Mortgagee shall not invalidate the policy as against such Mortgagee or otherwise adversely affect the rights of such Mortgagee under any such policy;

(ii) each Owner's property insurance shall insure the Owner's respective Mortgagee as a "mortgagee or loss payee", as may be required under such Mortgagee's loan documents.

(iii) the property insurance shall provide, by endorsement or otherwise, that the insured shall have the right under the policy waive in writing prior to a loss any or all rights of recovery against any party, for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insured 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) the property insurance shall provide that all losses payable shall be paid as their interest may appear;

(v) shall provide for a minimum of thirty (30) days' advance written notice (except for non-payment of premium which shall require ten (10) days notice) of the cancellation, nonrenewal or material modification thereof to Mortgagees and all insureds thereunder;

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(vi) the property insurance shall include a standard mortgagee endorsement;

(vii) the property insurance shall not include a co-insurance clause;

(viii) the liability insurance shall provide coverage on an occurrence basis, rather than a claims made basis; and

(ix) may be maintained in whole or part in the form of a blanket policy covering other locations provided that such insurance substantially complies in all respects with the provisions of this **Section 10.2**.

(d) **Additional Insurance Requirements.** Each Owner shall also procure any other insurance required by such Owner's Mortgagee, provided that the Owner whose Mortgagee requires such other insurance shall bear one hundred percent (100%) of the cost of such insurance.

(e) Upon written request, certificates of insurance evidencing the coverages outlined in **Section 10.2** or binders with summaries of coverages and renewals thereof afforded and evidencing the insurance required shall promptly be delivered to the other Owners and their respective Mortgagees.

(f) Notwithstanding anything set forth herein to the contrary, the Owners acknowledge that the Existing Policy shall remain in effect from the date of this Agreement and shall be deemed to satisfy all of the property insurance requirements set forth in **Section 10.2(a)** hereof, subject to the following:

(i) The Existing Policy shall be updated in accordance with **Section 10.1(f)(i)** hereof;

(ii) Immediately upon its commencement of construction of the Project, an Owner shall obtain a builder's risk insurance policy (each, an "**Individual Builder's Risk Policy**") from the Existing Insurer which insures such Owner's new Improvements and Owned Facilities to be constructed on the Property, including, but not limited to, any such new Improvements and Owned Facilities which constitute Core and Shell (collectively, the "**New Core and Shell**").

(iii) In the event of a casualty which damages any portion of the New Core and Shell, the insurance proceeds under any such Individual Builder's Risk Policy which are attributable to such New Core and Shell (the "**New Core and Shell Proceeds**") shall be treated as if they are insurance proceeds under the Project Insurance, such that the New Core and Shell Insurance Proceeds shall be deposited with the Depositary and applied only toward the repair and restoration of such New Core and Shell, all in accordance with the requirements and procedures set forth in **Section 10.2** hereof.

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(iv) Immediately upon the issuance by the City of a certificate of occupancy for an Owner's Parcel, such Owner shall obtain its own property insurance policy for its Owner Insured Property in accordance with **Section 10.2(a)** hereof, whereupon the coverage provided for Core and Shell under the Existing Policy shall be modified as provided in **Section 10.1(f)(ii)** hereof.

10.3 **Insurance Companies.** Insurance policies required by this **Article 10** hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, and for any primary insurers who shall hold a current Policyholder's Alphanumeric and Financial Size Category Rating of not less than A-/V.II according to AM Best's Insurance Reports (or such greater ratings as may be required by any Mortgagee) or a substantially equivalent rating from a nationally-recognized insurance rating service.

10.4 **Limits of Liability.** Insurance specified in **Section 10.1** hereof shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than twice annually, or upon the request of any Mortgagee, to determine if such limits and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be covered and the financial responsibility of the insurers, and to determine whether such limits and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations, or orders and whether, on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. The limits of the Project Insurance shall be increased or decreased, if justified, based upon said review, and, upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided, that no agreement regarding a decrease in limits of liability or elimination of any types of coverages required by this Agreement shall be effective without the written consent of (a) each of the Owners, whose consent shall not be unreasonably withheld and (b) each Owner's Mortgagees. With the consent of each of the Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required hereunder bear to each other.

10.5 **Renewal Policies.** Copies of all renewal insurance policies for the coverages outlined in **Section 10.1** hereof or binders with summaries of coverages afforded and evidencing renewal shall be delivered to the Owners and their respective Mortgagees prior to the expiration date of any such expiring insurance policy. For the Project Insurance, upon written request of an Owner, binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should Hotel Owner fail to provide and maintain any policy of insurance required under **Section 10.1** hereof or should any Owner fail to pay its share of the premiums or other costs for any joint policies, then another Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after written demand therefor from any Creditor Owner.



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10.6 **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 or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Agreement, each Owner hereby waives all claims for recovery from the other Owners 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; provided any deductible amounts shall be borne by the Owner whose act or omission caused the event out of which the claim arose, and if no fault can be attributed, then any deductible shall be shared in accordance with the Approved Division.

## ARTICLE 11

### MAINTENANCE AND REPAIR; DAMAGE

#### 11.1 Maintenance of Improvements; Restoration.

##### (a) Obligation to Maintain.

(i) Except as expressly provided in Article 7 hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Parcels, or hereinafter in this Article 11 each Owner shall, at its respective sole cost and expense, maintain and keep its respective Parcel, Improvements and Owned Facilities in good order and condition, consistent with the Project Quality Standard, and shall undertake all Maintenance of, in, on, under, within, upon and about such Parcel, Improvements and Owned Facilities, whether said Maintenance is to the interior or exterior thereof or structural or non-structural components thereof, or involve ordinary or extraordinary Maintenance, necessary to keep the same in first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its respective Parcels, Improvements or Owned Facilities. In the event that any Law or any governmental or quasi-governmental agency requires Maintenance and if any Owner fails to perform any such required Maintenance, and another Owner exercises its Self-Help rights pursuant to **Section 12.9** below to perform such Maintenance, the performing Owner shall be entitled to receive from such non-performing Owner a ten percent (10%) surcharge on the cost incurred by such performing Owner of the Maintenance necessary to comply with any such Law or requirement of any such governmental or quasi-governmental authority.

**UNOFFICIAL COPY****(ii) Façade Cleaning; Mandatory Façade Inspection.**

(A) Each Owner shall, from time to time as reasonably necessary to comply with the Project Quality Standard and the Preservation Easement, cause to be cleaned such Owner's respective portion of the Façade at such Owner's sole expense. Notwithstanding the foregoing, Hotel Owner may, in its sole discretion, upon one hundred-eighty (180) days prior written notice to the other Owners, require all of the Owners to clean their respective portions of the Façade (the "Mandatory Cleaning"); provided, however, Hotel Owner may not require any such Mandatory Cleaning more than once every fifteen (15) years commencing on the 15<sup>th</sup> anniversary of the date of the Original REA.

(B) Reference is made to the requirement under the City's Municipal Code, whereby (1) the façade of certain buildings (including the Building) must be inspected (the "Mandatory Façade Inspection") by a licensed structural engineer or architect to determine the structural integrity of such façade, and (2) a report (the "Façade Report") must be prepared by such inspecting engineer or architect (as applicable) and submitted to the City. Notwithstanding anything set forth in this Agreement to the contrary, the completion of the Mandatory Façade Inspection and Façade Report shall be the sole responsibility of Hotel Owner for the benefit of all of the Owners in the same manner as described in Section 11.2(b). Hotel Owner's costs and filing fees in connection with such Mandatory Façade Inspection and Façade Report shall be allocated to the Owners in accordance with the Approved Division. Hotel Owner shall pay all costs and filing fees in connection with such Mandatory Façade Inspection and Façade Report and the filing of such Façade Report with the City. Within fifteen (15) days after receipt from Hotel Owner of the invoices for such costs and filing fees, together with proof of payment thereof, Office Owner, Retail Owner and NH Owner shall each deliver to Hotel Owner a check made payable to Hotel Owner for its respective allocable share of such costs and filing fees.

(b) **Maintenance of the Hotel Parcel by Hotel Owner.** Hotel Owner shall, at its sole expense, be responsible for the following relating to the Hotel Parcel:

- (i) Hotel Façade Maintenance;
- (ii) Elevator Maintenance for elevators located on the Hotel Parcel, excluding the NH Passenger Elevators -- Wells, which shall be Maintained by NH Owner;
- (iii) Window washing;

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(iv) Maintenance of all Sidewalks, including snow, ice and debris removal and cleaning, subject to the rights of NH Owner and Retail Owner in accordance with Section 7.1(i) hereof;

(v) Property management;

(vi) Security;

(vii) Maintenance of all vaults located beneath the sidewalks adjacent to the Building;

(viii) Maintenance of City permits to use vaults and all City license fees in connection with such permits;

(ix) Permits and permit fees for canopies;

(x) Maintenance of sprinkler Facilities and emergency lighting (other than the emergency generator, which is a shared expense) within the Hotel Parcel; and

(xi) Hotel Vaulted Roof.

(c) **Maintenance of the Office Parcel by Office Owner.** Office Owner shall, at its sole expense, be responsible for the following relating to the Office Parcel:

(i) Elevator Maintenance for elevators located in the Office Parcel;

(ii) Window washing of interior windows, if any;

(iii) Property management;

(iv) Security; and

(v) Maintenance of sprinkler Facilities and emergency lighting (other than the emergency generator, which is a shared expense) within the Office Parcel.

(d) **Maintenance of the Retail Parcel by Retail Owner.** Retail Owner shall, at its sole expense, be responsible for the following relating to the Retail Parcel:

(i) Window washing of interior windows;

(ii) Property management (if applicable);

(iii) Security;

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(iv) Maintenance of sprinkler Facilities and emergency lighting (other than the emergency generator, which is a shared expense) within the Retail Parcel; and

(v) Permits and permit fees for canopies.

(e) **Maintenance Of NH Parcel by NH Owner.** NH Owner shall, at its sole expense, be responsible for the following relating to the NH Parcel:

(i) Elevator Maintenance for elevators located in the NH Parcel and the NH Passenger Elevators - Wells;

(ii) Window washing of interior windows, if any;

(iii) Property management;

(iv) Security; and

(v) Maintenance of sprinkler Facilities and emergency lighting (other than the emergency generator, which is a shared expense) within the Office Parcel.

11.2 **Damage to Core and Shell**

(a) **Project Insurance Claim.**

(i) Any loss covered by the Project Insurance as required under Section **Error! Reference source not found.** hereof shall be adjusted by Hotel Owner, subject to reasonable input from the following (collectively, the "Interested Parties"): (A) the Owners whose portion of the Core and Shell is materially affected by such loss, and (B) such Owners' respective Mortgagees (to the extent required under such Mortgagees' respective loan documents).

(ii) The insurance proceeds for such loss shall be payable to the Depository in accordance with the terms of Article 18 hereof, unless the Owners otherwise agree, subject to the consent of the Mortgagees, if required; provided, however, if the loss does not exceed 5% of the total insured value of the Core and Shell and does not involve structural work, then the Owners shall designate Hotel Owner, the manager then operating a hotel in the Hotel Parcel, or a qualified bank as the trustee of such insurance proceeds. The Depository shall hold any insurance proceeds in trust for all the Owners and Mortgagees as their interests may appear.

(b) **Completion of Repair and Restoration.** The repair and restoration of that portion of the Core and Shell damaged by a loss shall be the sole responsibility of Hotel Owner for the benefit of all of the Owners, subject to the payment obligations of the Owners set forth in Section 11.2(e) hereof. Said repair and restoration shall be

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commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a contractor or contractors selected by Hotel Owner, subject to reasonable input from the Interested Parties, 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. If an architect or engineer is required in connection with such repair and restoration, such architect or engineer (as applicable) shall be selected by Hotel Owner, subject to reasonable input from the Interested Parties.

(c) **Disbursement of Insurance Proceeds.** The property insurance proceeds shall be disbursed first for the repair or restoration of the damaged Core and Shell, and the Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged Core and Shell has been completely repaired or restored, expenses for the Depository have been paid or the Project is terminated, pursuant to Section 11.5 hereof. The surplus insurance proceeds, if any, shall be payable to each Owner based upon the square footage of the respective percentage of ownership of the Core and Shell areas damaged.

(d) **Obligation to Repair and Restore Core and Shell.** Notwithstanding anything set forth in this Agreement to the contrary, other than as set forth in Section 11.5 hereof, Owners' obligation to repair or rebuild the Core and Shell following a casualty shall be absolute.

(e) **Cost of Repairs.**

(i) Any costs (as such term is defined in Section 11.6 hereof) incurred by Hotel Owner in connection with any Core and Shell repair and restoration work (together with a reasonable administrative fee to be agreed upon, in good faith, by the Owners, taking into account the nature and extent of Hotel Owner's responsibilities in connection with such repair and restoration work), shall be subject to reimbursement by the other Owners based upon the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

(ii) If the cost and expense of performing any repair and restoration provided for in this Section 11.2 hereof shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible, 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 in proportion to the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

## 11.3 **Damage Affecting Only One Owner's Improvements and Owned Facilities.**

(a) If any Owner's Improvements or Owned Facilities are damaged by casualty and if (and to the extent) such damage (i) does not adversely affect the use or

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operation of any other Owner's Improvements or Owned Facilities for their intended purposes, (ii) does not deprive any other Owner of the benefit of any Easement granted to such other Owner by this Agreement or any service to be performed for the benefit of such other Owner, (iii) does not adversely affect the physical appearance of the exterior of the Building, and (iv) does not constitute a nuisance or an unreasonable risk of damage to any other Owner or their Occupants, then the Owner whose Improvements or Owned Facilities were damaged (the "Affected Owner") may, in the Affected Owner's sole discretion (subject to the rights of the Affected Owner's Mortgagee), elect to repair and restore, or not repair and restore, such damage (a "Permissive Repair"). Notwithstanding the foregoing, any damage which is covered by the Project Insurance shall be repaired and restored in accordance with Section 11.2 hereof.

(b) If any Owner's Improvements or Owned Facilities are damaged by casualty and if the provisions of Section 11.3(a) hereof are not applicable because the nature of the damage is such that one or more criteria (i) through (iv) of Section 11.3(a) are not satisfied, then, to the extent such damage does not fall within the parameters described in Section 11.3(a), the repair and restoration of only that portion of such damage which does not fall within Section 11.3(a) shall be the sole responsibility of the Affected Owner and any Affected Owner which fails to perform such repair or restoration is a Defaulting Owner. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Affected Owner by a contractor or contractors selected by the Affected Owner. The plans and specifications for such repair and restoration shall provide for the damaged portion of the Improvements and Owned Facilities to be rebuilt as nearly identical as commercially practicable to their original condition, unless prohibited by law, or unless the other Owners otherwise agree. The architect or engineer preparing the plans and specifications shall furnish to each of the other Owners a set of the plans and specifications which it has prepared in connection with such repair and restoration.

(c) If the cost and expense of performing any repair and restoration provided for in this Section 11.3 shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be the sole obligation of the Affected Owner.

**11.4 Failure to Carry Insurance.** Notwithstanding the foregoing, if an Owner has not carried the insurance required to be carried by such Owner under Article 10 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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## 11.5 Agreement Not to Repair.

(a) **Unanimous Decision of Owners and Mortgagees.** If the Improvements on all of the Parcels are destroyed or substantially damaged, and each Owner agrees in writing not to rebuild, repair or restore such Improvements, subject to the written approval of the Mortgagees, it is the intent of the Owners that the insurance proceeds from the Project Insurance shall be shared (but only to the extent specified herein below in this Section 11.5.

(b) **Allocation of Insurance Proceeds.** Upon agreement not to rebuild, all of the Improvements shall be demolished. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be allocated among each of the Owners, subject to the rights of their respective Mortgagees, based on the following allocation (the "**Disaster Allocation**"): (A) the Owner of the Office Parcel or its Mortgagee (as applicable) shall be entitled to a portion of such proceeds equal to a fraction thereof, the numerator of which shall be the appraised value of the Office Parcel on the date immediately preceding the casualty (the "**Office Parcel Appraisal**"), and the denominator of which shall be the sum of (i) the Office Parcel Appraisal, (ii) the appraised value of the Hotel Parcel on the date immediately preceding the casualty (the "**Hotel Parcel Appraisal**"), (iii) the appraisal value of the Retail Parcel on the date immediately preceding the casualty (the "**Retail Parcel Appraisal**") and (iv) the appraised value of the NH Parcel on the date immediately preceding the casualty (the "**NH Parcel Appraisal**") (collectively with the Office Parcel Appraisal, the Hotel Parcel Appraisal and the Retail Parcel Appraisal, the "**Property Appraisal**"), (B) Hotel Owner or its Mortgagee (as applicable) shall be entitled to a portion of such proceeds equal to a fraction thereof, the numerator of which shall be the Hotel Parcel Appraisal, and the denominator of which shall be the Property Appraisal, (C) Retail Owner or its Mortgagee (as applicable) shall be entitled to a portion of such proceeds equal to a fraction thereof, the numerator of which shall be the Retail Parcel Appraisal, and the denominator of which shall be the Property Appraisal, and (D) NH Owner or its Mortgagee (as applicable) shall be entitled to a portion of such proceeds equal to a fraction thereof, the numerator of which shall be the NH Parcel Appraisal and the denominator of which shall be the Property Appraisal.

(c) **Sale of Property and Allocation of Sale Proceeds.** If, pursuant to Section 11.5(a) hereof, the Owners and their Mortgagees unanimously agree not to rebuild, repair or restore the Property, the Owners, collectively, shall sell the entire Property as one undivided parcel and shall divide the proceeds from such sale among the Owners and their respective Mortgagees (as applicable) based upon the Disaster Allocation. Hotel Owner shall be responsible for coordinating the sale process on the Owners' behalf, with reasonable input from the Interested Parties. The Owners agree to reasonably cooperate with each other and otherwise act in good faith in connection with such sale.

11.6 **Cost Defined.** For purposes of this Article 11, architects' and engineers' fees, attorneys' fee, consultants' fees, title insurance premiums and other similar costs and expenses

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relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

**11.7 Easements for Repair and Reconstruction.** The Owners hereby agree to grant to each other any necessary temporary easements for the repair and reconstruction of the Core and Shell, Improvements and Owned Facilities (as applicable) following any damage or casualty contemplated in this Article 11, including, without limitation, easements for ingress and egress for purposes of performing necessary repairs and reconstruction, easements for installation and Maintenance of scaffolding, cranes and any other construction equipment or Facilities necessary for the performance of any such repair or reconstruction work, easements for staging of construction equipment and materials, easements for crane arm swings, etc. The easement rights granted pursuant to this Section 11.7 shall be construed in accordance with Section 2.1 (as it relates to easement rights burdening the Hotel Parcel), Section 3.1 (as it relates to easement rights burdening the Office Parcel), Section 4.1 (as it relates to easement rights burdening the Retail Parcel) and Section 5.1 (as it relates to easement rights burdening the NH Parcel). In granting and exercising any such easement rights, the grantee of any such easement rights shall (A) use best efforts to minimize the disturbance to the Improvements and personalty located on, and the operations and use of, the Parcel burdened by any such easement rights, (B) use best efforts to minimize the duration of the exercise of any such easement rights and (C) if and to the extent that the Improvements or personalty of the Owner whose Parcel is burdened by such easement rights are damaged, the Owner who caused any damage (or through which such damage was caused) shall promptly repair any such damage and shall indemnify, defend and hold harmless the Owner whose Improvements or personalty were damaged for any costs and expenses in connection with the repair and restoration of such Improvements or personalty so damaged.

**ARTICLE 12****LIENS, DEBTS, INTEREST AND REMEDIES****12.1 Failure to Perform.**

(a) If, at any time, any Owner fails within ten (10) 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 Agreement 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 Parcel owned by the Defaulting Owner; and
- (ii) for a default under Article 11, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such Parcel or otherwise under insurance policies carried pursuant to Article 9 hereof (subject in all respects to the rights of Mortgagees in such insurance proceeds, as set forth herein) to secure the repayment of such sum of money, all interest on such sum accruing pursuant to the provisions of this Article 12 and reasonable



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attorneys' fees incurred in connection with such failure to pay and efforts by the Creditor Owner to collect.

(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. 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.

(c) A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on such Parcel owned by the Defaulting Owner.

## 12.2 **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 12) shall in any way affect or diminish any lien perfected pursuant to this Article 12. A "**Prior Lien**" means a Mortgage which has been recorded against the Building, the Property or any Parcel (as applicable) prior to the time of recording of the Creditor Owner's notice of lien.

(b) If, at any time, any Owner as a Creditor Owner has recorded a notice of lien under Section 12.1 of this Agreement against any other Owner's Parcel, which lien has not been foreclosed, released, or satisfied in full, and if such other Owner's Parcel, or any part or interest therein, is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such Parcel, or part or interest thereof, the lesser of:

- (i) an amount sufficient to satisfy the unpaid Default Amount, and
- (ii) the entire proceeds from the sale, minus any amount paid to satisfy all Prior Liens.

(c) If any portion of the Default Amount remains unpaid following any such sale, the Creditor Owner shall continue to have: (i) a lien on such Parcel and (ii) the rights with respect to the proceeds of any subsequent sales of such Parcel to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Parcel. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under Article 13, then the proceeds which a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depository or other escrowee acceptable to both the Defaulting Owner and the Creditor Owner and held for disbursement at the joint order of the applicable Owners or as directed by court order or by the arbitrator in such arbitration, and the Creditor Owner shall release its lien of record.

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12.3 **Mortgagee's Subrogation.** The holder of a Mortgage on all or any portion of a Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article 12 affecting the Parcel secured by its Mortgage upon payment of the amount secured by such lien.

12.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time announced by JP Morgan Chase Bank, N.A. at Chicago, Illinois or any successor thereto, as its prime rate of interest, or if a prime rate is not announced or available, then interest shall accrue at the annual rate of eighteen percent (18%).

12.5 **Cumulative Remedies.** The rights and remedies of an Owner provided for in this Article 12 or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. 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 Agreement. 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.

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

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

12.8 **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, reasonable attorneys' fees shall be payable after the decision in such appeal.

12.9 **Self-Help.** Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Agreement which grants an Owner the right to perform an obligation which another 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. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the Creditor Owner in

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performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Agreement for non-performance of an obligation, such provision shall control the provisions of this Section 12.9.

12.10 **Subordination.** Notwithstanding anything to the contrary contained in this Agreement, any lien arising pursuant to this Article 12 is and shall be superior to and shall take precedence over the lien of any Mortgage encumbering the Property to the full extent of any and all amounts secured by such Mortgage. The rights of the holder of any lien arising pursuant to this Article 12 to foreclose upon or otherwise exercise any remedies with respect to any such lien shall be superior to and shall take precedence over the lien of any such Mortgagee.

## ARTICLE 13

### **ARBITRATION**

13.1 **Disputes Subject to Arbitration.** Each of the questions, differences, disputes, claims or controversies arising among or between Owners under this Agreement which (a) shall not be resolved within forty five (45) days after it shall arise (or such other shorter or longer time period expressly provided herein) and (b) shall not exceed ten million dollars (\$10,000,000) (the "***Arbitration Cap***") in claimed damages shall be submitted for arbitration (each, an "***Arbitrable Dispute***"). Any dispute regarding claimed damages in excess of the Arbitration Cap shall be filed in a court of law or equity. Notwithstanding anything to the contrary contained herein, in no event shall any arbitration under this Article 13 result in the change in the respective cost sharing percentages set forth in this Agreement.

13.2 **Arbitration Procedure.**

(a) The Dispute shall be resolved by binding arbitration which shall be commenced by filing a notice of arbitration under Rule 3 of the CPR Non-Administered Arbitration Rules, as they may be amended or modified from time to time (the "***Arbitration Rules***"). The Dispute shall be arbitrated in accordance with the Arbitration Rules then in effect, by a sole arbitrator selected in accordance with the Arbitration Rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having competent jurisdiction. The place of the arbitration shall be Chicago, Illinois. Except as modified by this Section 13.2, the Arbitration Rules shall govern the arbitration.

(b) **Time of Proceeding of the Arbitration.** It is the intent of the Owners that, barring extraordinary circumstances, any arbitration shall be concluded within six (6) months after the date the statement of claim is received by the arbitrator. Unless the applicable Owners agree otherwise, hearings shall be held by the arbitrator on an expedited basis during normal business hours, subject to scheduling conflicts. The arbitrator shall use his or her best efforts to issue the final award or awards within a period of forty-five (45) days after closure of the proceedings.

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(c) **Discovery in Arbitration.** The Owners agree that discovery shall be limited and shall be handled expeditiously. Discovery procedures available in litigation before a court shall not apply; however, each applicable Owner shall produce relevant and non-privileged documents or copies thereof requested by the other applicable Owners within the time limit set and to the extent required by order of the arbitrator. Depositions may be ordered by the arbitrator upon a showing of need. All disputes regarding discovery shall be promptly resolved by the arbitrator.

(d) **Rules of Evidence in Arbitration.** Strict rules of evidence shall not apply in an arbitration conducted pursuant to this Declaration. The applicable Owners may offer such evidence as they desire, and the arbitrator shall accept such evidence as the arbitrator deems relevant to the issues and accord it such weight as the arbitrator deems appropriate. The arbitrator shall be the exclusive judge of relevancy and materiality notwithstanding the amount in controversy.

(e) **Costs.** The arbitrator shall notify the participants, from time to time, of estimated amounts to be advanced in equal shares by the applicable Owners to meet anticipated expenses of arbitration, and each Owner shall advance its share promptly.

(f) **Confidentiality.** The Owners and the arbitrator shall treat all aspects of the dispute resolution proceedings, including without limitation, discovery, testimony and other evidence, briefs and the award, as strictly confidential. No disclosures relating to arbitration or dispute resolution procedures shall be made unless required by law.

13.3 **Provisional Remedies.** The procedures specified in this Article 13 shall be the sole and exclusive procedures for the resolution of Arbitrable Disputes between or among the Owners arising out of or relating to this Agreement; provided, however, that any Owner, without prejudice to the above procedures, may file to seek a preliminary injunction or other provisional, injunctive or equitable judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the applicable Owners will continue to participate in good faith in the procedures specified in this Article 13.

13.4 **Costs.** The costs of the dispute resolution, including attorneys' fees and other costs of trial or arbitration, shall be borne by the non-prevailing Owners in the Arbitrable Dispute.

13.5 **Governing Law of all Disputes.** It is agreed that, in the event of any Arbitrable Dispute, the laws of the State of Illinois shall govern.

13.6 **Notice to Mortgagees.** The Owner initiating arbitration shall notify the Mortgagees who have provided notice pursuant to Section 22.11(b) of the filing of a claim and demand in arbitration within five (5) days thereafter.

The decision of the Arbitration, and any award of the Arbitration, shall be final, binding upon the applicable Owners and unappealable, and judgment thereon shall be entered by any court of competent jurisdiction. Failure to comply with the decision of the Arbitration shall be

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deemed a default under this Agreement. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 12.4.

## ARTICLE 14

### COOPERATION; UNAVOIDABLE DELAYS

14.1 **Construction.** The NH Parcel Improvements and any Alterations to the Retail Parcel shall be constructed in a good and workmanlike manner.

14.2 **Cooperation.** If, after the completion of any construction activities by any Owner, it becomes necessary to amend this Agreement to modify easement or other rights, obligations of any party hereto, factual matters or to make any other change to this Agreement that becomes necessary following the completion of such construction activities, the Owners shall reasonably cooperate with each other to in good faith enter into any necessary amendments to this Agreement to reflect any such modifications or any modifications reasonably requested by any Mortgagee; provided, however, that in no event shall any Owner be obligated to modify the Approved Division or any other revenue or cost sharing percentage or allocation provided for in this Agreement.

14.3 **Unavoidable Delay.** No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, enemy action, flood, severe weather conditions, civil unrest, strikes, lockouts, unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) (an "Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay.

14.4 **Notification.** The Owner unable to perform (the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay. If non-performance is due to an Unavoidable Delay affecting the Non-Performing Owner which does not affect another Owner's self-help remedy provided for elsewhere in this Agreement and which is otherwise exercisable for such non-performance, then notwithstanding such Unavoidable Delay, such other Owner shall still be entitled to the self-help remedy exercisable only under reasonable circumstances with respect to those obligations to have been performed by the Non-Performing Owner which are the subject of the Unavoidable Delay.

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## ARTICLE 15

### CONDEMNATION

15.1 **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Project 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 the Project shall be performed, in accordance with the requirements of this Article 15. The Owners shall cooperate with one another to maximize the amount of the Award.

15.2 **Payment of Award to Depository; Temporary Taking Awards.** All Awards resulting from the taking of all or any part of any 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 15.3, and the Depository shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective Parcel.

15.3 **Taking of Only One Parcel.**

(a) In the event of a taking (other than a temporary taking) of all or any portion of a Parcel which taking does not affect any other Parcel (or Owned Facilities of any other Owner), then, subject to the provisions of Section 15.6 hereof, the Owner of the Parcel, Improvements or Facilities affected by such taking shall repair and restore the remainder of Improvements or Facilities to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of another Owner reasonably necessary to such other Owner's operations or the services to be furnished to such other Owner under Article 7 or if otherwise required by this Agreement.

(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 Parcel 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 19 hereof and to retain any excess not required for such repair and restoration; provided, however, that the right of any Owner to receive a portion of such excess, if any, shall be subject to the provisions of Section 22.11 and to Mortgages encumbering the Parcel affected by the taking. If the cost of repair or restoration is estimated to be less than \$100,000, then the Award need not be paid to the Depository.

(c) 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 another Owner's operations or the services to be furnished to any of the other Owners under Article 7 hereof, then:

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(i) a Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then a Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or

(ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) a Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 19 hereof, be entitled to withdraw any Award and any other monies held by the Depositary as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies.

(d) Repair and restoration under this Section 15.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain any other Owner's consent if it would not otherwise be required under Article 16.

#### 15.4 Repair and Restoration by Two or More Owners.

(a) In the event of a taking (other than a temporary taking) affecting two or more Parcels (or affecting two or more Owners' Improvements or Facilities), then, subject to the provisions of Section 15.6 hereof, such Owners shall cooperate to repair and restore the remainder of their respective Improvements and Owned Facilities in accordance with plans and specifications (hereinafter described) approved by such Owners and their respective Mortgagees; provided, however, with respect to any Core and Shell portion of such Improvements and Owned Facilities, Hotel Owner shall be responsible for such repair and restoration on the Owners' behalf in accordance with Section 11.2(b) hereof; further provided, however, that the costs of such repair and restoration shall be paid with the Award. Each Owner shall cause the repair and restoration of its respective Improvements and Other Facilities to be commenced and pursued to completion in as timely a manner as practicable under the circumstances by a contractor or contractors selected by such Owner, and otherwise in accordance with Section 11.3(b) hereof (subject to the approval of its Mortgagee).

(b) The plans and specifications for such repair and restoration shall be prepared by the Architect, unless such Owners shall otherwise agree, all subject to the approval of their Mortgagees. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements, as applicable, to form an architectural and functional whole, with such changes as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement are extinguished or materially impaired, then changes shall be made to provide for

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Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under this Agreement and for the furnishing of services under Article 7 hereof. The Architect will furnish to such Owners (but only if and to the extent each such Owner's approval is required) and their Mortgagees a set of such plans and specifications for their approval. Unless such Owners otherwise agree (subject to the approval of their Mortgagees), 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 and the Mortgagees of each such Parcel, as such repair and restoration progresses, to disburse, in accordance with Article 21 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

**15.5 Excess Award.** The Award for any taking described in Section 15.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 15.6 hereof). Any excess of the Award over the cost of repair and restoration shall then be allocated to each Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's Parcel) bears to the apportionment of the Award to the other Owners (including parties with an interest in such other Owner's Parcel); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 22.11. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

**15.6 Demolition.** If, as a result of a taking (other than a temporary taking), any Owner reasonably determines that its Improvements can no longer be repaired or 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 Improvements as may be required by Section 15.3 and Section 15.4 hereof. However, such Owner not repairing or restoring shall demolish, repair or restore its Improvements, to the extent, if any, as may be necessary, to provide essential services set forth in this Agreement or Easements (including, but limited to, structural support) reasonably necessary to the operations of the other Owners. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 15.4 hereof are applicable.

**15.7 Allocation of Award.** In the event of a taking of all or substantially all of more than one Parcel, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners, subject to the rights of their respective Mortgagees, 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 22.11; further provided, however, with respect to any Owner required to perform any demolition, repairs or restoration in accordance with Section 15.6 of this Agreement, the cost of any such demolition,



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repair or restoration work shall first be deducted from such Owner's share of the award (unless such costs have already been paid in full by such Owner).

## ARTICLE 16

### ALTERATIONS; ZONING

#### 16.1 Permitted Alterations.

(a) An Owner (hereinafter in this Article 16, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article 16, "Alterations") to the Improvements within such Altering Owner's Parcel, provided such Alterations comply with all of the provisions of this Article 16 applicable to the Parcel owned by such Owner. Alterations shall also include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 16. Replacement of Facilities may be made by an Altering Owner without consent of any other Owner. The provisions of this Article 16 governing Alterations do not negate or diminish other provisions of this Agreement having to do with additions, improvements or alterations expressly required or permitted in Article 7 (Services), Article 8 (Compliance with Laws), Article 11 (Maintenance and Repair) and Article 15 (Condemnation) hereof, which are governed by such provisions only and not this Article 16 unless also designated in such Articles as "Alterations" to be governed by this Article 16. Notwithstanding any provision to the contrary, the provisions of this Article 16 shall not apply to (A) any Owner until its portion of the Project is substantially complete and ready for occupancy and (B) any right to exercise self-help remedies as provided in Section 12.9 or elsewhere in this Agreement.

(b) Alterations to the Project shall not be made without the prior written consent of the other Owners, unless otherwise expressly permitted by this Agreement, if such Alterations will:

(i) during their performance or upon their completion, unreasonably diminish the benefits afforded to such other Owner by an Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;

(ii) during their performance or upon their completion, materially degrade or diminish services to such other Owner under Article 7;

(iii) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to Article 7 hereof;

(iv) materially alter the Façade (other than with signage permitted by this Agreement);

(v) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports (other than the opening of any holes for Pipes, Utilities, vents and ductwork which will not affect the structural

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soundness of the Building or which in the opinion of a structural 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 or odorous gases, in a manner which fails to comply with any applicable law if such other Owner could be adversely affected by such Alterations;

(vii) unless required by Law, without the consent of Office Owner, materially and adversely affect the Office Parcel (including, without limitation, entrances thereto and exits from LaSalle Street, scaffolding in front of or affixed to any portion of the Office Parcel, or otherwise affecting pedestrian or vehicular traffic for the Office Parcel) or the Loading Dock or garbage dumpster area or pathways thereto;

(viii) unless required by Law, without the consent of Hotel Owner, materially and adversely affect the Hotel Parcel (including, without limitation, entrances thereto and exits from Adams Street, scaffolding in front of or affixed to any portion of the Hotel Parcel, or otherwise affecting pedestrian or vehicular traffic for the Hotel Parcel) or the Loading Dock or garbage dumpster area or pathways thereto.

(ix) unless required by Law, without the consent of Retail Owner, materially and adversely affect the Retail Parcel (including, without limitation, entrances thereto and exits from the public way in front of such Retail Parcel, scaffolding in front of or affixed to any portion of the Retail Parcel, or otherwise affecting pedestrian or vehicular traffic for the Retail Parcel) or the Loading Dock or garbage dumpster area or pathways thereto.

(x) unless required by Law, without the consent of NH Owner, materially and adversely affect the NH Parcel (including, without limitation, entrances thereto and exits from LaSalle Street and Welis Street, scaffolding in front of or affixed to any portion of the NH Parcel, or otherwise affecting pedestrian or vehicular traffic for the NH Parcel) or the Loading Dock or garbage dumpster area or pathways thereto.

Notwithstanding anything to the contrary contained in this Agreement, except as expressly permitted in this Agreement, no Owner shall be permitted to perform any Alteration that affects the Façade on levels 1 through 20 (other than permitted signage) without first obtaining the consent of each of the other Owners, which consent shall not be unreasonably withheld, conditioned or delayed.

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## 16.2 Notification.

(a) If, at any time, the Altering Owner proposes to make any Alterations that require the consent of any other Owner pursuant to Section 16.1 above, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such Owner a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 16.2.

(b) An Altering Owner may also at any time request confirmation from any 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. Failure to respond during such ten (10) business day period shall be deemed confirmation that no consent is required.

(c) Any Owner from whom consent is requested will not unreasonably delay its response, having in mind the scope and complexity of the proposed Alterations. If such other Owner consents to such Alterations or, in any case where consent is required, does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within thirty (30) days (as hereinafter extended) after receipt of plans and specifications, such other Owner shall be deemed to have given its consent and, provided that no other Owner's consent is required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. Within the thirty (30) day response period, such other Owner may request:

(i) additional information with respect to the proposed Alterations, in which case such other Owner will be granted an additional thirty (30) days to respond from the date such other Owner receives such additional information, or

(ii) an extension of the time to respond, which extension of time shall not exceed thirty (30) days from the date of the request.

(d) If, in the good faith opinion of any other Owner, the Altering Owner has violated or will violate the provisions of Section 16.1(b), then such Owner (the "Objecting Party") believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 16.1(b) hereof, and shall specify the respect or respects in which its provisions are or will be violated.

(e) If an Objecting Party in good faith asserts a violation of Section 16.1(a) or Section 16.1(b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to the rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely

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violation of the provisions of Section 16.1(b), the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(f) Each Owner 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 of Chicago Building Code,

(iii) comply with all of the applicable provisions of this Agreement,  
and

(iv) carry or cause its contractors to carry "all risk" builder's risk insurance (including loss of income and "soft costs") for not less than the completed value of the work being performed by such Owner for any Alterations which require another Owner's consent under Section 16.1(b). Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of buildings in the City of Chicago which are consistent with the Project Quality Standard, to the extent that such coverage is not already in place under the existing insurance policies for such Parcel.

(g) Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Improvements 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 Improvements, as applicable, 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 or harm to persons) 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.

(h) An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by the other Owner who would otherwise suffer unreasonable disturbance, the Altering Owner (i) shall not unreasonably refuse to perform work outside normal business hours and (ii) shall pay all costs associated with work at times other than normal business hours, including overtime and delay costs.

16.3 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of any other Owner. An Altering Owner shall send copies of any building permits to any other Owner at such other Owner's request. If joinder by such other Owner(s) not making Alterations is so required, such other Owner(s) shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided,

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however, the Altering Owner shall indemnify, and hold harmless such other Owner(s) 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 execution of the application, permit or other instrument by such other Owners. If an Owner fails to execute said application or instruments when required hereunder to do so, and there is no dispute between or among the Owners concerning the affected Alterations, the Altering Owner is hereby irrevocably appointed attorney-in-fact of such 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; provided, however, the Altering Owner shall indemnify, and hold harmless such other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of the Altering Owner's execution of the application, permit or other instrument as attorney-in-fact of such other Owner.

16.4 **No Lien.** An Owner performing any work required or provided for under this Agreement shall include in any construction contract a provision pursuant to which the contractor:

(a) recognizes the separate ownership of the Office Parcel, the Hotel Parcel, the Retail Parcel and the NH Parcel, and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (said Act and any successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the portion of the Project owned by the Altering Owner, or

(b) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

16.5 **Zoning.** Any Owner may seek to amend the zoning from time to time as it relates to such Owner's Parcel; provided, however, no Owner may seek (i) a zoning change to the Property that will adversely affect the rights that another Owner has under the zoning for its respective Parcel (including, but not limited to, a reduction in the Floor Area Ratio for such Owner's Parcel) or another Owner's ability to continue to operate its Improvements or any replacement thereof in accordance with such Owner's then current practices or which will otherwise have a material adverse impact on the Improvements of such other Owner or the use and enjoyment thereof (including, without limitation, the ability of such Owner to lease space within its Parcel); (ii) a change in the basic nature of the Property as a mixed use development with ground floor retail space with consistent materials, finishes and quality. Each Owner shall have the obligation to reasonably cooperate with the other Owners in filing zoning and other applications with the City and other governmental agencies (including joining such applications and providing economic disclosure statements, if necessary), provided that the cooperating Owner shall not be required to pay any monies as part of such cooperation.

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## ARTICLE 17

### ESTOPPEL CERTIFICATES

17.1 **Estoppel Certificates**. Each Owner shall, from time to time but not more than four times in a twelve month period, within thirty (30) days after written request from another Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 22.11(b) hereof, execute, acknowledge and deliver to the requesting party, a certificate ("**Estoppel Certificate**") stating:

- (a) That the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying such modifications;
- (b) Whether, to the actual knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Agreement (or grounds therefor after giving the requisite notice hereunder) by the Requesting Owner and, if so, specifying the nature and extent thereof;
- (c) Whether there are any sums (other than payments for Operating Expenses owed under **Exhibit 7.8** which in the aggregate are less than \$10,000 and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the Requesting Owner, and, if there is any such sum, specifying the nature and amounts thereof;
- (d) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 7 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 to its actual knowledge, against the enforcement of the Requesting Owner's rights hereunder;
- (f) The total amount of all liens being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder) by the Owner executing the Estoppel Certificate to its actual knowledge under the provisions of this Agreement 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;

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(h) The nature of any arbitration proceeding or finding under Article 13 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 21 hereof; and

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

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

## ARTICLE 18

### DEPOSITARY

#### 18.1 Appointment of Depositary.

(a) A depositary (the "Depositary") shall be appointed for the benefit of the Mortgagees and Owners, as their respective interests may appear, at or before such time as the duties of Depositary are to be performed, in the manner hereinafter provided to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Agreement. The Depositary shall be appointed by the Owners jointly (with the reasonable approval of their respective Mortgagees, if required by the applicable Mortgage), and the initial Depositary shall be Chicago Title and Trust Company, 10 South LaSalle Street, Chicago, Illinois 60603, for the benefit of the Mortgagees and Owners, as defined therein, as their interests may appear. Any other Depositary selected by the Owners shall be one of the then five (5) largest trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois or other bank or trust company agreed to by the Owners. Any Owner may at any time propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) business days after receipt of the proposal by such Owner, the disagreement shall become an Arbitrable Dispute.

(b) The Depositary shall be entitled to receive from each of the Owners said Owner's equitable share of the Depositary's reasonable fees and expenses for acting as Depositary, in accordance with the Approved Division, and may retain said fees and expenses, free of trust, from monies held by it.

(c) Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment in substantially the form attached hereto as Exhibit 18.1 and made part hereof.

18.2 Liability of Depositary. The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from

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its own negligence or willful misconduct. The Depository's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation Award or Awards unless the Depository shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to said insurance proceeds or condemnation Award or Awards, then said Owner may authorize the Depository to so proceed. In addition, the Depository may rely conclusively on any certificate furnished by the Architect to the Depository in accordance with the provisions of Section 19.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

**18.3 Interest on Deposited Funds.** 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 the Owner or Owners for whose benefit monies are being held have requested, and the Mortgagees of said Owners have concurred (if required), in connection with a specified deposit of funds with the Depository, that the Depository undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and the Owners, then the Depository, within thirty (30) days after request from any Owner given to the Depository and to the other Owner, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within ninety (90) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Agreement. 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. Any Owner entitled to such interest shall, upon Depository's request, provide its tax identification number to the Depository in connection with same. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Agreement shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

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



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18.5 **Resignation of Depository.** The 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 18.1, appoint a substitute who qualifies under Section 18.1 hereof (if there are duties to be performed at such time by a Depository or funds are held by the resigning Depository), and the Depository shall prepare a final accounting of all funds received, held and disbursed by it and shall transfer all funds, together with copies of all records, held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said 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 trust company in Chicago, Illinois, which qualifies under Section 18.1 hereof.

## ARTICLE 19

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

#### 19.1 **Disbursement Requests.**

(a) Each request by the Architect acting pursuant to the provisions of this Agreement for disbursement of insurance proceeds, any Award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners and their Mortgagees, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the Work:

(i) That the sum requested:

(A) has been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of more than one Owner (in which event the certificate shall specify the amount paid by each 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, in which event the 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' Liens Act and any title insurer affording coverage against mechanics' liens;

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(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; and

(iv) Other information which may from time to time be required by the Mortgagees which is customarily required by mortgagees in connection with the repair, restoration or demolition of comparable mixed use commercial buildings, or as may be agreed to by the Owners.

(b) Upon:

(i) compliance with the provisions of Section 19.1(a), and

(ii) receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Liens Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by 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 and the Mortgagees of the lien waivers and other documentation (and Depositary shall provide to the Mortgagees any other information reasonably requested by any such Mortgagees), and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and the Mortgagees) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the liens in favor of the Mortgagees, and

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' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owner or Mortgagee or the Depositary 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 Agreement.

The Depositary may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Architect to the Depositary in accordance with the provisions of this Section 19.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

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

## ARTICLE 20

### **ARCHITECT**

#### 20.1 **Appointment of Architect.**

(a) In the event more than one Owner (each an "**Appointing Owner**" and collectively, the "**Appointing Owners**") jointly require the services of an architect pursuant to this Agreement, the Appointing Owners shall appoint a firm consisting of architects and/or engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Agreement (the "**Architect**").

(b) The Architect shall, upon its appointment, execute an agreement with such Appointing Owners in the form required by the Appointing Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Agreement and shall provide that the Appointing Owners may cause the then serving Architect to be replaced, or may terminate the Agreement, without cause upon thirty (30) days' prior written notice. The Owners responsible for appointing the Architect may replace the Architect for any reason. A Mortgagee shall have the right to approve the appointment of the Architect in the first instance or any replacement of the Architect, if required by the terms of its Mortgage.

(c) If the Appointing Owners do not collectively desire to replace the Architect, then the Appointing Owner (the "**Requesting Owner**") desiring replacement of the Architect shall serve notice upon the other Appointing Owners and their respective Mortgagees requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform fairly, diligently or competently. If, in the opinion of any Appointing Owner or its respective Mortgagee receiving such notice, the Requesting Owner is not entitled to require the appointment of a new Architect pursuant to this Section 20.1, any Appointing Owner or its respective Mortgagee receiving such notice and objecting to the appointment of a new Architect shall notify the Requesting Owner, the other Appointing

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Owners and Mortgagees 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 Appointing Owner desiring to replace the Architect of such objection, the Appointing Owners do not resolve their differences (subject to the approval of their Mortgagees), or if the Appointing Owners fail to agree on the form of agreement, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether the Requesting Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Appointing Owners and their respective Mortgagees.

20.2 **Notice of Submission of Dispute to Architect.** In any instance when the Architect serving pursuant to Section 20.1 hereof is authorized by this Agreement to advise the Appointing Owners concerning any dispute or matter, any Owner may submit the same to the Architect. Any Appointing Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Appointing Owners and their respective Mortgagees. The Architect shall, except in an Emergency Situation, afford each Appointing Owner involved in any dispute or matter, and any attorney or other representative designated by such Appointing Owners or their respective Mortgagees, an opportunity to furnish information or data or to present such party's views. No advice given by the Architect under this Agreement shall be binding on the Appointing Owners, and the Appointing Owners may accept or reject such advice.

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

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

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therefor from the Architect, then any other Appointing Owner may pay the same and thereby become a Creditor Owner and be entitled to all rights under Article 11 of this Agreement.

## ARTICLE 21

### NOTICES AND APPROVALS

#### 21.1 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 any other Owner shall be in writing and shall be deemed to have been given (i) if and when personally delivered (including messenger service), or (ii) on the third business day after being deposited in United States registered or certified mail, postage prepaid, or (iii) on the first business day after being deposited with a commercially recognized national overnight delivery service, and addressed to a party at its address set forth below or to such other address the Owner to receive such notice may have designated to all other Owners by notice in accordance herewith:

If to Hotel Owner: Dean Vegosen  
Ciklin Lubitz Martens & O'Connell  
115 North Flagler Drive – 20th Floor  
West Palm Beach, FL 33401  
Tel. 561-832-5900 (ext. 3306)  
Fax 561-833-4209

And: Lance Fair  
UST XIX 208 S. LaSalle, Ltd.  
c/o Estein & Associates USA, Ltd.  
4705 S. Apopka-Vineland Rd., Suite 201  
Orlando, FL 32819  
Telephone: 407-909-2200  
Facsimile: 407-909-2222

With a copy to: Herbert J. Linn  
Pedersen & Houpt  
161 North Clark Street, Suite 3100  
Chicago, Illinois 60601  
Telephone: 312-261-2104  
Facsimile: 312-261-1104

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If to Office Owner or  
Retail Owner:

UST Prime III Office Owner, LLC  
c/o The Prime Group, Inc.  
120 North LaSalle Street, Suite 3200  
Chicago, Illinois 60602  
Attention: Michael W. Reschke  
Telephone: (312) 917-1500  
Facsimile: (312) 917-1511

With a copy to:

Herbert J. Linn  
Pedersen & Houpt  
161 North Clark Street, Suite 3100  
Chicago, Illinois 60601  
Telephone: 312-261-2104  
Facsimile: 312-261-1104

and to any Mortgagee which has complied with the notice provisions of Section 22.11 hereof.

(b) Any Owner may designate a different address from time to time, provided however it has given at least five (5) business days' advance notice of such 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 to shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "Owner" of its respective portion of the Improvements, and the succeeding Owner of that portion of the Improvements 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 Improvements as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City of Chicago department or agency having jurisdiction over City of Chicago addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Improvements in question.

## 21.2 Multiple Owners.

(a) If at any time the interest or estate of any of the Owners in their respective Parcels shall be owned by more than one Person (hereinafter collectively referred to as "multiple owners"), the multiple owners shall give to the other Owners a written notice, executed and acknowledged by all of the multiple owners, in form proper for recording, which shall:

(i) designate one Person, having an address in the State of Illinois to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners, and

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(ii) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder.

(b) Until any such designation is revoked by written notice given by all of their multiple owners or their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Article 21 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 given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process as stated above.

## ARTICLE 22

### GENERAL

22.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Improvements and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Land and Improvements. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as 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 the other Owners 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 Owners hereunder.

22.2 **Time of Essence.** Time is of the essence of this Agreement.

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

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

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

22.5 **Amendments to Agreement.** This Agreement may be amended or terminated only by a duly recorded instrument signed by all of the then Owners of the Parcels and consented to by each of their respective Mortgagees, if any. Any amendment to or termination of this Agreement shall be recorded with the Recorder. Any such amendment shall not be effective until it is so recorded. To the extent the any Owner's Mortgagee require reasonable changes be made to this Agreement as a condition to financing such Owner's portion of the project, the other Owners agree that they shall not unreasonably withhold or delay their consent and will cooperate with the requesting Owner to execute any such necessary amendment, provided such change will not have an adverse effect upon the non-requesting Owners and the costs of any such amendment shall be borne exclusively by the requesting Owner; and further provided that no party shall be required to agree to a change in any percentage specified herein for the sharing of expenses.

22.6 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual to coincide with the perpetual Easements provided for under this Agreement (or if the law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If the law prescribes such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of twenty (20) years), subject to amendment or termination as set forth in Section 22.5. If any of the options, privileges, covenants or rights created by this Agreement would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama, the current President of the United States of America.

22.7 **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 Improvements subject to an Easement, unless the Owner benefited by such Easement states in writing its intention to abandon the Easement, provided the consent of their respective Mortgagees shall also be required with respect to any such abandonment.

22.8 **Applicable Laws.** The parties hereto acknowledge that this Agreement and all other instruments in connection herewith have been negotiated, executed and delivered in the City of Chicago, County of Cook and State of Illinois. This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance



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with the laws of the State of Illinois, including without limitation, matters affecting title to all real property, described herein.

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

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

22.11 **Notice to Mortgagees; Rights of Mortgagees.**

(a) The term "**Mortgage**" as used herein shall mean any mortgage (or any trust deed) or an interest in the Property given primarily to secure the repayment of money owed by the mortgagor. The term "**Mortgagee**" as used herein shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed) and their respective successors and assigns.

(b) If a Mortgagee shall have served on the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of every default notice given by one party to the Owner of the Parcel subject to the Mortgage issued for the benefit of such Mortgagee at the same time as and whenever such notice shall thereafter be given by one party to such Owner, at the address last furnished by such Mortgagee. Notwithstanding the foregoing, once a release of such Mortgage has been recorded against the affected Parcel, such Mortgagee shall no longer be entitled to notice in accordance with this Section 22.11(b).

(c) If a Mortgagee shall have signed the Consent of Mortgagee attached hereto, or delivered notice to the Owners pursuant to and in accordance with subparagraph (b) above, and if an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement 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 Owners.

(d) A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Agreement by the Owner whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach to such mortgagor Owner.

22.12 **Coordination with Tenants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall, diligently and in good faith, coordinate all requests and contacts between Occupants of its Parcel and the other Owners relating to (a) the enjoyment of any Easements, (b) the exercise of any rights or benefits granted

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under this Agreement or (c) with respect to any other matters arising under or pursuant to this Agreement; provided, however, that any such coordination shall not render such Owner liable either to such tenants or the other Owners for the actions or inactions of such Occupants or other Owners.

**22.13 Waiver of Mechanic's Liens by Owners.** The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claims of or rights to liens which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to the Property or improvements owned by the other Owners 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 Agreement, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or subsubcontractors, 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 7 or Article 8 of this Agreement. The parties agree that, to the extent permitted by Law, the legal effect of this Agreement is that no mechanic's lien or claim may be filed or maintained by any Owner under the Mechanic's 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 7 and Article 8 of this Agreement. The provisions of this Section 22.13 are not intended to waive any lien created under Article 12.

**22.14 Binding Effect.** The Easements, covenants and restrictions created under this Agreement shall be irrevocable and, subject to Section 22.5 of this Agreement, perpetual in nature, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

**22.15 Entire Agreement.** This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

**22.16 Counterparts.** This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

**22.17 Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

**22.18 Default Shall Not Permit Termination of Agreement; No Rescission Without Unanimous Consent.** No default under this Agreement shall entitle any party hereto to terminate, cancel or otherwise rescind this Agreement or any of the easements, terms or conditions set forth herein; provided, however, that this limitation shall not affect any other

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rights or remedies the parties hereto may have by reason of any default under this Agreement or any written amendment or supplement hereto. No party hereto may rescind this Agreement without the written consent of all of the Owners.

22.19 **No Partnership, Joint Venture or Principal-Agent Relationship.** Neither anything in this Agreement contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties to this Agreement.

22.20 **Bankruptcy.** In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity or any bankruptcy trustee.

## ARTICLE 23

### LIMITATION OF LIABILITY

23.1 **Limitation of Liability.** The liability under this Agreement of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Facilities (including insurance and condemnation proceeds attributable to the Property and Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust), any and all rights to receive rents and other income from such Owner's Parcel (or any portion thereof) in the future, and any security, such as a letter of credit or bond provided pursuant to this Agreement, and no other assets of such Owner. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and the negative capital account of a partner in a partnership, or a member in a limited liability company, which is an Owner and an obligation of a partner to contribute capital to the partnership, or a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability, shall be asserted or be enforceable against it or any of the beneficiaries under said trust Agreement by reason of any of the covenants or conditions contained herein. Notwithstanding anything to the contrary contained in this Section 23.1, this Section 23.1 shall not be construed so as to limit any rights of a Mortgagee to enforce any recourse rights it may have against its borrower.

23.2 **Transfer of Ownership.** If an Owner shall sell, assign, transfer, convey or otherwise dispose of all or any portion of its Parcel (other than as security for a loan to such Owner), then:

- (a) to the extent of such assignment, transfer, conveyance or other disposition of its Parcel, such Owner shall be freed and relieved of any and all covenants and

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obligations arising under this Agreement which accrue under this Agreement from and after the date such Owner shall make such sale, assignment, transfer, conveyance or other disposition, and

(b) The Person who succeeds to Owner's interest in such Parcel (or portion thereof) shall be deemed to have assumed any and all of the covenants and obligations arising under this Agreement of such Owner, to the extent of such Person's interest in the Parcel, which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Parcel (or portion thereof).

## ARTICLE 24

### STRUCTURAL SUPPORT

24.1 **Structural Safety and Integrity.** No Owner shall do or permit any act which would impair, undermine or adversely affect the structural safety or integrity of any portion of the Building.

24.2 **Construction of Support.** The Owner responsible for any adverse effect on the structural safety or integrity of any portion of the 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 Owners, which such approvals shall not be unreasonably withheld or delayed. The responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs. The provisions of Article 11, and not this Article 24, shall apply if the adverse effect of the structural safety or integrity of the Building results from a fire or other casualty. The construction of such necessary remedial structural support shall be performed by a contractor or contractors jointly selected by the Owners (with the advice of the Architect). If the Owners, and the Owners' Mortgagees, 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 24, provision or construction of necessary remedial structural support shall also include any Maintenance required to remedy or prevent any adverse effect on the structural integrity or safety of the Building.

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