

UNOFFICIAL COPY

This instrument was prepared by
and upon recording return to:

Lawrence M. Gritton
126 West Chicago Avenue
Chicago, Illinois 60654

Permanent Index Numbers:

17-09-120-013-0000
17-09-120-014-0000



Doc# 1709645039 Fee \$126.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/06/2017 10:50 AM PG: 1 OF 45

(Space above for Recorder's use only)

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

DATED AS OF APRIL 6, 2017

BY

HURON SEDGWICK DEVELOPMENT LLC
an Illinois limited liability company

RECORDING FEE \$ 126.00
DATE 4-6-17 COPIES 0x
OK BY RUSTO

UNOFFICIAL COPY

TABLE OF CONTENTS

		<u>PAGE</u>
ARTICLE 1	INCORPORATION OF RECITALS.....	2
ARTICLE 2	DEFINITIONS.....	2
ARTICLE 3	EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY.....	5
ARTICLE 4	EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND DECLARANT	7
ARTICLE 5	GENERAL EASEMENT PROVISIONS.....	9
ARTICLE 6	SERVICES TO OWNER OF COMMERCIAL PROPERTY.....	9
ARTICLE 7	STRUCTURAL SUPPORT.....	12
ARTICLE 8	COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING.....	13
ARTICLE 9	REAL ESTATE TAXES.....	15
ARTICLE 10	INSURANCE.....	16
ARTICLE 11	MAINTENANCE, REPAIR & DAMAGE TO THE CONDOMINIUM IMPROVEMENTS AND COMMERCIAL IMPROVEMENTS.....	18
ARTICLE 12	LIENS, RIGHTS AND REMEDIES.....	22
ARTICLE 13	ARBITRATION.....	25
ARTICLE 14	UNAVOIDABLE DELAYS.....	26
ARTICLE 15	CONDEMNATION.....	26
ARTICLE 16	ARCHITECT.....	27
ARTICLE 17	DEPOSITARY.....	28
ARTICLE 18	DISBURSEMENTS OF FUNDS BY DEPOSITARY.....	31
ARTICLE 19	ESTOPPEL CERTIFICATES.....	32
ARTICLE 20	CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS.....	33
ARTICLE 21	ALTERATIONS.....	34
ARTICLE 22	NOTICES.....	36
ARTICLE 23	LIMITATION OF LIABILITY.....	37
ARTICLE 24	GENERAL.....	37

UNOFFICIAL COPY

EXHIBITS

- A - LEGAL DESCRIPTION OF DEVELOPMENT AREA
- B - LEGAL DESCRIPTION OF COMMERCIAL PARCEL
- C - LEGAL DESCRIPTION OF RESIDENTIAL PARCEL

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into as of the _____ day of April, 2017, by **HURON SEDGWICK DEVELOPMENT LLC**, an Illinois limited liability company ("Declarant").

RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the Condominium Declaration, shall have the meanings set forth in Article 2 hereof.

B. Declarant is the owner of the Development Area situated in Chicago, Cook County, Illinois and legally described in Exhibit A.

C. The Development Area is improved or will be improved with the Restaurant Improvements and the Commercial Improvements.

D. Neither the Residential Property nor the Commercial Property will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Residential Property and the Commercial Property.

E. The Declarant intends to submit all of the Residential Property, but not the Commercial Property, to the Act.

F. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Development Area, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Development Area, and to protect the respective values of each such portion, estate and interest in the Development Area, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Residential Property which will be binding upon each present and future Owner of the Residential Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Commercial Property, or of any portion thereof or interest or estate therein, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Residential Property, or of any portion thereof or interest or estate therein, including any Unit in the Residential Property.

NOW, THEREFORE, the Declarant hereby declares that the Development Area and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Development Area and each of the foregoing shall run with the land subject to this Declaration.

UNOFFICIAL COPY

ARTICLE 1

INCORPORATION OF RECITALS

The foregoing Recitals are hereby incorporated by reference in the body of this Declaration as if fully set forth herein.

ARTICLE 2

DEFINITIONS

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

2.2 “**Architect**” shall have the meaning set forth in Article 16 hereof.

2.3 “**Building**” means that certain multi-story building commonly known as 400-410 West Huron, Chicago, Illinois, including but not limited to, the Residential Property, the Commercial Property, the Facilities and the sidewalks, walkways, driveways and landscaping located in, on or about the Development Area.

2.4 “**City**” means the City of Chicago.

2.5 “**Commercial Improvements**” means all improvements constructed within and upon the Commercial Parcel. In the event of any reconstruction of the Commercial Improvements pursuant to Article 12 or Article 16, the Commercial Improvements shall include any such improvements reconstructed on the Commercial Parcel. The Commercial Improvements will initially include a restaurant.

2.6 “**Commercial Parcel**” means that portion of the Development Area legally described on Exhibit B attached hereto.

2.7 “**Commercial Property**” means the Commercial Parcel and the Commercial Improvements.

2.8 “**Common Elements**” means all portions of the Development Area submitted from time to time to the Act pursuant to a Condominium Declaration except the Units.

2.9 “**Common Walls, Floors and Ceilings**” means all common structural and partition walls, floors and ceilings situated on or adjoining the Residential Property and Commercial Property, or located on one such parcel but forming the walls, floors or ceilings of the other parcel.

2.10 “**Condominium Association**” means an Illinois not-for-profit corporation to be formed for the purpose of administering the Residential Property pursuant to the Act.

2.11 “**Condominium Declaration**” means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits the Condominium Property to the provisions of the Act.

UNOFFICIAL COPY

2.12 “**Condominium Property**” means the Residential Property from and after its submission to the Act and so long it has not been withdrawn from the Act.

2.13 “**Creditor Owner**” means, except where otherwise defined hereunder in a specific context, an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payments or to perform such duty or obligation as and when required.

2.14 “**Declarant**” means Huron Sedgwick Development LLC, an Illinois limited liability company, its successors and assigns and any other person or entity designated by Declarant to be the Declarant.

2.15 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements thereto.

2.16 “**Default Rate**” means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 12.5 hereof.

2.17 “**Defaulting Owner**”, except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.

2.18 “**Depository**” means the person or entity from time to time acting pursuant to Article 17 of the Declaration.

2.19 “**Development Area**” or “**Total Property**” means the Residential Property and the Commercial Property and is legally described on Exhibit A attached hereto.

2.20 “**Easements**” means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.

2.21 “**Emergency Situation**” means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Development Area or any property in, on, under, within, upon or about the Development Area. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

2.22 “**Facilities**” means all components of the chilled and heated hot water, condenser water, central air handling equipment and fans, temperature control, domestic water, fire protection, sprinkler system, life safety systems, sanitary waste, storm water, electrical, gas, and all other utility systems forming a part of either the Commercial Property or the Residential Property and designed or utilized to furnish utility and other services to any portion of the Development Area, including but not limited to the following components of such systems: antenna, boilers, boxes, brackets, cabinets, cables, chutes, coils, compactors, compressors, computers, conduits, controls, control centers, cooling houses, couplers, dampers, devices, ducts, elevator cars, elevators rails, equipment, fans, fixtures, generators, hangers, heat traces, heat exchanges, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, systems, transformers, valves, wiring and the like.

2.23 “**Improvements**” means the Residential Improvements and the Commercial Improvements.

UNOFFICIAL COPY

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

2.25 “**Mortgage**” means a first mortgage or first trust deed in the nature of a mortgage on the Commercial Property or the Residential Property, but shall not include a mortgage or trust deed on a Unit in the Residential Property or a Unit in the Commercial Property if the Commercial Property is submitted to the Act.

2.26 “**Mortgagee**” means the holder of a Mortgage.

2.27 “**Owner**” means either the Owner of the Residential Property or the Owner of the Commercial Property, as the context requires. “**Owners**” means the Owners of the Commercial Property and the Residential Property collectively.

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

2.29 “**Owner of the Residential Property**” means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Condominium Property. If and so long as the Residential Property, or any portion thereof, has been submitted to and remains subject to the provisions of the Act, the Owner of the Residential Property shall mean collectively all of the Unit Owners in and to the Residential Property and not individually.

2.30 “**Recorder**” means the Recorder of Deeds of Cook County, Illinois.

2.31 “**Residential Improvements**” means the portion of the Improvements located on the Residential Parcel after their submission to the Act. The Residential Improvements shall also mean any improvements on the Residential Parcel which may be reconstructed on the Residential Parcel pursuant to Article 11 and 15 of this Declaration. The Residential Improvements include a fourteen (14) story building which contains or will contain twenty-five (25) residential condominium units, a Parking Unit (as defined in the Condominium Declaration), a parking garage with parking for seventy-two (72) automobiles and the Parking Unit.

2.32 “**Residential Parcel**” means that portion of the Development Area legally described on Exhibit C attached hereto.

2.33 “**Residential Property**” means the Residential Parcel and the Residential Improvements.

2.34 “**Unavoidable Delay**” means fire or other casualty, national emergency, governmental or municipal laws or restrictions, governmental regulation or restriction or failure of a governmental body to act in a timely manner, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of an Owner (other than inability to make payment of money) which excuses the timely performance of any obligation created hereunder. The time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. Such non-performing Owner shall, from

UNOFFICIAL COPY

time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

2.35 “**Unit**” means any portion of the Condominium Property submitted to the Act described as a “Unit” in the Condominium Declaration.

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

2.37 “**Unit Ownership**” means a part of any portion of the Condominium Property consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

ARTICLE 3

EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Property in favor of the Residential Property are hereby granted, reserved, declared and created (the term “Granted” or “granted” as hereinafter used in describing Easements shall be deemed to mean “granted, reserved, declared and created”).

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

(b) A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Commercial Property and connected to Facilities located in the Residential Property (and any replacements thereof) which provide the Residential Property, with any utilities or other services, or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Residential Property.

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

(d) A non-exclusive Easement (i) in and to all Common Walls, Floors and Ceilings serving the Residential Property and (ii) for the use of such Common Walls, Floors and Ceilings.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the exterior of the Commercial Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to

UNOFFICIAL COPY

exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 7 hereof or to assist in providing the services required under Article 6 hereof.

(f) A non-exclusive Easement for ingress, egress and Maintenance for persons, material and equipment over, on or across and through the Commercial Property to the extent necessary to permit Maintenance, repair, replacement, restoration or reconstruction of the duct work, pipes, wires and equipment located above or behind walls and ceilings of the Commercial Property or located in the Residential Property but accessible only through the Commercial Property.

(g) A non-exclusive Easement for ingress, egress and Maintenance for persons, material and equipment over, on or across the exterior of the Commercial Property to the extent necessary to permit construction, Maintenance, repair, replacement, restoration, reconstruction or cleaning of the facade of the Commercial Property and to provide access, ingress and egress to Residential Property in the basement of the Building.

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

3.3 Easements provided for, declared or created under this Article 3 shall be binding upon the Commercial Property and each Owner of the Commercial Property and shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property and if and so long as the Residential Property is subject to the Act each portion thereof shall be part of the Common Elements attributable to the Residential Property.

ARTICLE 4

EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND DECLARANT

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

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

(b) A non-exclusive Easement (i) for access to and the use for their intended purposes and Maintenance of all Facilities located in the Residential Property and connected to Facilities located in the Commercial Property (and any replacements thereof) which provide the

UNOFFICIAL COPY

Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property.

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

(d) A non-exclusive Easement (i) in and to all Common Walls, Floors and Ceilings serving the Commercial Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

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

(f) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on or across and through the Residential Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article 7 hereof or to assist in providing the services required under Article 6 hereof.

(g) A non-exclusive Easement for ingress, egress and Maintenance for persons, material and equipment over, on, across and through the Residential Property to the extent reasonably necessary to permit the Maintenance, repair, replacement and restoration of the equipment and other Facilities serving the Commercial Property which are located in areas of the Residential Property.

(h) A non-exclusive Easement for pedestrian ingress and egress over, upon and through the sidewalks, walkways or driveways located within or adjacent to the Building, to the extent reasonably necessary for access to and from public sidewalks for the purposes of use of the Commercial Property by commercial tenants and deliveries to the commercial tenants.

(i) An Easement permitting encroachments on and over the sidewalk located along the Building for the construction and Maintenance of the entrance canopies, canopy support columns, exterior lighting fixtures, stoops, doorways and related facilities attached to or forming part of the Residential Property or the Improvements thereon.

4.2 Each Easement created under this Article 4 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Residential Property may, from time to time, after consultation with the Owner of the Commercial Property, impose with respect to the use of such Easements, including, without limitation, the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Residential Property and in order to assure the reasonable security of the Residential Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

UNOFFICIAL COPY

4.3 Easements provided for, declared or created under this Article 4 shall be binding upon the Residential Property and the Owner of the Residential Property and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property.

ARTICLE 5

GENERAL EASEMENT PROVISIONS

5.1 With regard to any portion of the Total Property over which Easements have been granted pursuant to Article 3 and Article 4 hereof, the Owner of that portion of the Total Property burdened by such Easement shall have the right, after consultation with the Owner benefitted by such Easements, to relocate any such Easements in the event comparable alternative means can be substituted to insure the continuation of the benefit granted.

5.2 With regard to any portion of the Total Property over which Easements have been granted pursuant to Article 3 and 4 hereof for pedestrian ingress and egress in an Emergency Situation, such Easements shall not be deemed to include (a) any portion of a Unit or other dwelling unit, and (b) the interior of any portion of the Total Property intended to be leased to tenants, except stairwells and hallways.

5.3 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of any such Easement in such a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement, and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement, such Owner shall be entitled to reimbursement from the grantee who has failed to perform the necessary restoration or replacement for all costs and expenses incurred by such Owner, plus interest at the Default Rate from the date of payment of such costs and expenses by such Owner to the date of reimbursement, and such Owner shall obtain a lien for the costs and expenses of any such restoration or replacement against that portion of the Total Property owned by the non-performing grantee or its agent in accordance with Article 12 hereof.

5.4 The Easements declared or created pursuant to Articles 3, 4 and 5 shall benefit the Owners and their respective tenants, guests and invitees.

ARTICLE 6

SERVICES TO OWNER OF COMMERCIAL PROPERTY

6.1 The Owner of the Residential Property shall furnish, or cause to be furnished by independent contractors, the following services to the Owner of the Commercial Property to the extent required and on the same basis as such services are provided to residents of the Residential Property:

UNOFFICIAL COPY

(a) Support Components. Maintenance, repair and replacement of the roof, parapets and down spouts of the Building, the storm lines and drains, the structural members, footings, caissons, foundations, columns and beams and any other support components of the Building.

(b) Sprinkler System. Maintenance, repair and replacement of all life safety systems, including smoke detectors, fire sprinkler systems, monitoring systems, and back-up generator/emergency lighting system serving the Building.

(c) Exterior Building. Maintenance and repair of the facade of the Improvements including tuckpointing, caulking and canopies (but not including repair or replacement of windows, and window systems and components, doors and door frames, awnings, or signage and related fixtures located in, on or exclusively serving the Commercial Property, which shall be the responsibility of the Owner of the Commercial Property).

(d) Water System. Maintenance, repair and replacement of those Facilities making up the water system for the Building, including all water pipes and lines leading to the City water main, and related equipment, and the following for the Commercial Property: (i) condenser water for the HVAC equipment; domestic water/sewer; and (iii) hot water ("Commercial Property Water Charges").

(e) HVAC System. Maintenance, repair and replacement of those Facilities making up the heating and central air handling system for the Building, including all boilers, coils, compressors, cooling houses, ducts, fans and systems related thereto.

(f) Sanitary Waste System. Maintenance, repair and replacement of those Facilities making up the sanitary waste systems for the Building, including all sewer lines leading to the City sewers, all risers, sewers, setting basins, pumps and related equipment.

(g) Exterior Lighting. Maintenance of exterior lighting Fixtures and facilities and related equipment on the exterior of the Building (excluding exterior lighting controlled exclusively by the Owner of the Commercial Property, which shall be the sole responsibility of the Owner of the Commercial Property).

(h) Landscaping. Maintenance of the landscaping of the Total Property.

(i) Adjacent Areas and Street Level. Maintenance of (i) the pavement and surfaces of the sidewalks and areas adjacent thereto located on property owned by the City, including curbs, driveways and landscaping thereon, landscaping and planters located thereon; (ii) the street level pavement adjacent to the Building; (iii) removal of snow from sidewalks, stairways and driveways on all sidewalks and driveways around the perimeter of the Building, and (iv) keeping such sidewalks, driveways and street level entrances to the Building free from debris, snow and obstruction to pedestrian and vehicular traffic.

6.2 The Owner of the Commercial Property shall cooperate with the Owner of the Residential Property in its efforts to secure and furnish the foregoing services.

6.3 The Owner of the Residential Property shall pay ninety seven and one-half percent (97.50%) of all costs associated with all of the services to be provided to the Owner of the Commercial Property pursuant to Section 6.1 (collectively, the "Reimbursed Services"), and the Owner of the Commercial Property shall pay two and one-half percent (2.50%) of the costs associated with the

UNOFFICIAL COPY

Reimbursed Services, exclusive of Commercial Property Water Charges. In addition to the foregoing, the Owner of the Commercial Property shall pay Commercial Property Water Charges in the amount of \$725/month, subject to 1 1/2% annual increases. Within ninety (90) days following the end of each calendar year, the Owner of the Residential Property shall have determined the actual amounts of all such Reimbursed Services for such calendar year and shall deliver to the Owner of the Commercial Property a detailed, written statement (the "**Statement**") of such Reimbursed Services for such calendar year containing copies of all relevant work sheets and supporting data from which the amount of such Reimbursed Services were derived. The Owner of the Commercial Property shall, within thirty (30) days after receipt of such Statement, pay such amount to the Owner of the Residential Property.

6.4 If the Owner of the Residential Property shall fail to render the services described in Section 6.1 above to the Owner of the Commercial Property (except when such failure is caused by the Owner of the Commercial Property or Unavoidable Delay) and such failure shall continue for a period of five (5) days after written notice thereof to the Owner of the Residential Property the Owner of the Commercial Property shall have the right to undertake the performance of such services on its own for its own benefit and at the cost and expense of the Owner of the Residential Property (subject to payment by the Owner of the Commercial Property of its pro rata share of such costs and expenses). Such notice shall not be required in an Emergency Situation resulting from such failure.

6.5 If, at any time, the Owner of the Commercial Property shall fail to pay to the Owner of the Residential Property any sum of money payable to it pursuant to the terms of this Declaration for ten (10) days after written notice from the Owner of the Residential Property demanding payment of said sum of money, then, subject to Section 13.4, the Owner of the Residential Property may discontinue furnishing of the services for which payment has not been received until said sum of money is paid.

6.6 Each Owner shall make a good-faith effort to operate its Facilities and cooperate to secure and furnish all services (a) at the lowest possible costs reasonably available without degrading the quality of any services furnished, and (b) in a manner so as to provide the Owner of the Commercial Property and the Owner of the Residential Property with comfortable occupancy and enjoyment of the Total Property for their respective intended uses. In performing Maintenance on the Building, the Owner of the Residential Property shall maintain barricades or scaffolding affecting access to the Commercial Property only during such times as Maintenance is being performed or when necessary for reasons of safety.

6.7 In the event of any break or failure of any water line, plumbing fixture, heating, ventilating, air-conditioning, electrical system, duct, pipe or other equipment or Facilities, in or serving the Commercial Property or passing through the Commercial Property, the Maintenance of which is the responsibility of the Owner of the Residential Property, the Owner of the Residential Property shall initiate all actions necessary to effectuate the repair or replacement of such items within five (5) hours' oral notice of such break or failure and shall cause all Maintenance, repairs and/or replacements to be completed as promptly as possible. If such repairs and maintenance are not commenced and diligently completed as aforesaid, the Owner of the Commercial Property shall have the right to cause all repairs and necessary Maintenance to such equipment to be made, and the Owner of the Commercial Property is hereby granted a non-exclusive easement in, on and through the Residential Property to perform such repairs and Maintenance. If the Owner of the Residential Property shall fail to perform any other obligation as required by the terms and conditions of Section 6 of this Declaration (except when such failure is caused by an Unavoidable Delay) and such failure shall continue for a period of five (5) days after written notice thereof to the Owner of the Residential Property (or, in the event of an Emergency Situation, immediately and without notice), the Owner of the Commercial Property shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Owner of the Residential

UNOFFICIAL COPY

Property cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to this Section 6.7, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance including payments made to tenants of the Commercial Property.

ARTICLE 7

STRUCTURAL SUPPORT

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

7.2 Except in the case in which Article 11 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the Owner on whose Property the structural support is located shall be responsible for construction in accordance with plans and specifications approved by the Owner of the portion of the Development Area benefitted thereby, and, subject to the provisions of Article 12 hereof, the Owner or Owners responsible for such reduction or endangerment shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support. However, (a) if the responsible Owner cannot be determined, the Owner benefitted by such structural support shall pay such costs and expenses and (b) if the reduction in structural support giving use to the need for such construction results from ordinary wear and tear, the Owner responsible pursuant to Article 11 for maintaining the Improvements requiring such repair shall pay such costs and expenses.

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

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

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

ARTICLE 8

COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

UNOFFICIAL COPY

8.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Development Area or any portion thereof, if noncompliance by it with respect to its portion of the Development Area or any part thereof would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Improvements themselves or would jeopardize the other Owner's right to occupy or utilize beneficially its portion of the Development Area or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner or would impose any threat or danger to any person or property. Neither Owner shall take any action or omit to take any action which could adversely affect (including, without limitation, increase the cost of) any of the insurance maintained by the other Owner.

8.2 No Owner shall permit the filing of any mechanics, materialmen or any other like lien on any other Owner's portion of the Development Area, or on its portion of the Development Area if the existence or foreclosure of such lien on its portion of the Development Area would adversely affect any Easement hereunder or services to be furnished pursuant to Article 6 hereof, arising by reason of its act or any work or materials which it has ordered. In the event an Owner fails to remove or bond over any such lien within thirty (30) days from the date of filing thereof, the other Owner may (but is not required to) take such action as the other Owner may deem necessary to remove such lien. Such Owner shall be entitled to reimbursement from the Owner who has failed to remove such lien for all costs and expenses incurred by such Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by such Owner to the date of reimbursement to the other Owner and shall also have a lien against the portion of the Development Area owned by the Defaulting Owner in accordance with Article 12 hereof. However, the Owner who has not paid such lien shall not be required to remove such lien within thirty (30) days after the filing thereof (and the other Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the Mortgage; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Owner responsible for the filing of such lien (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner, and to the Mortgagee if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the other Owner or, if loan documents so provide, to the Mortgagee, either: (i) cash or a surety bond from a responsible surety company acceptable to the other Owner and the Mortgagee, in an amount equal to one hundred ten percent (110%) of the lien claim and all interest and penalties then accrued thereon or such other amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to the other Owner and the Mortgagee of the Mortgage, if applicable. Provided however, in lieu of such bond or security, the Owner shall have the right to obtain a title insurance endorsement over such lien from a title insurance company acceptable to the other Owner and the Mortgagee, if applicable. The rights of an Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgage, and in such event the Owner responsible for the filing of such lien shall cause such lien to be discharged or removed within ten (10) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the other Owner shall have the right (but not the obligation) at any time to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

8.3 Each Owner (hereinafter in this Section 8.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this

UNOFFICIAL COPY

Section 8.3, the “Indemnitee”) from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner’s use, possession or management of the Indemnifying Owner’s portion of the Development Area or activities therein or arising out of the Indemnifying Owner’s use, exercise or enjoyment of an Easement and from and against all costs, attorney’s fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee. Notwithstanding the foregoing, in no event shall the Indemnifying Owner be liable for or indemnify Indemnitee for any loss or liability arising out of or resulting from Indemnitee’s gross negligence or willful misconduct.

8.4 Without limiting the provisions of Section 8.1, neither Owner shall make any Alterations (as that term is hereinbelow defined in Section 21.1) or allow any use of their respective portions of the Development Area or take or fail to take any action which would violate the provisions of the City Zoning Ordinance as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Development Area or any portions thereof. The Commercial Property and Residential Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the City Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the City Zoning Ordinance as applicable to any portions of the Development Area without the consent of the other Owner.

ARTICLE 9

REAL ESTATE TAXES

9.1 The Owners shall make good faith efforts and cooperate with each other so that the Commercial Property and Residential Property shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor (“**Assessor**”) of Cook County, Illinois. From and after submission of the Residential Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. The Owners of the Commercial Property shall pay the real estate taxes levied upon the Commercial Property, and the Owners of the Residential Property shall pay the real estate taxes levied upon the Residential Property. The Owners of the Commercial Property shall also have the right to divide the Commercial Property into multiple tax parcels.

9.2 At such time as the Commercial Property and Residential Property are separately assessed and taxed, each Owner shall pay the real estate taxes and special assessments for the portion of the Development Area owned by such Owner. Until the Commercial Property and Residential Property are separately taxed, the Owner of the Commercial Property shall pay the tax bills for the Development Area prior to their due date. Until a tax division has been completed 2% of all taxes shall be allocated to the Commercial Property and 98% of such taxes shall be allocated to the Residential Property.

9.3 The Owner of the Residential Property shall pay any undivided tax bill for the Development Area on or prior to the date when due. The Owner of the Commercial Property shall be

UNOFFICIAL COPY

responsible for and shall pay or reimburse the Owner of the Residential Property within ten (10) days after the demand of the Owner of the Commercial Property therefor for its pro rata share of such taxes.

9.4 If, at any time prior to the Commercial Property and the Residential Property being separately assessed and taxed, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such defaulting Owner is obligated to pay pursuant to this Article 9, then the other 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 such Owner for the amount of such payment plus Default Interest from the date of payment until the date of reimbursement, including the amount of any interest or penalty payments thereon, and shall also have a lien against the portion of the Development Area owned by the defaulting Owner in accordance with Article 12 hereof.

9.5 If an Owner endeavors to obtain a lowering of the assessed valuation upon the Development Area for the purpose of reducing taxes thereon prior to the time that the Commercial Property and Residential Property are separately assessed and taxed, the protesting Owner shall be required to serve written notice to the other Owner at least ten (10) days prior to the filing of the objection. The other Owner may elect within ten (10) days after receipt of the notice described above to join the protesting Owner in effecting such a reduction. In the event the other Owner fails to join the protesting Owner in obtaining the reduction, the protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding the protesting Owner may institute for that purpose and any such tax refund shall be the property of the protesting Owner. Notwithstanding the above, if the other Owner joins the protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes reflecting the reduction, if any, in such taxes, the Owners shall apportion the tax refund in accordance with their respective portions of such real estate taxes.

ARTICLE 10

INSURANCE

10.1 The Owner of the Commercial Property and the Residential Property shall procure and maintain the following insurance:

(a) Each Owner shall each keep its respective portion of the Building and Improvements insured for no less than "all risk" or "special form" coverage on real property and broad form on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(b) The Owners shall each maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Development Area, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, residential and/or commercial buildings, as applicable, in the City and adjacent communities, but in all events for limits of not less than \$1,000,000.00 combined single limit per occurrence with a general policy aggregate of \$2,000,000.00 for personal and bodily injury or property damage with at least an additional \$3,000,000.00 umbrella coverage. Each Owner shall cause the other Owner to be named an "additional insured" on such policies and shall deliver certificates of insurance to the other Owner confirming that such policies are in effect.

UNOFFICIAL COPY

10.2 Insurance policies required by Section 10.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois. Unless all Owners otherwise agree in writing, but in any event subject to the approval of the Mortgagees, with respect to each of the insurance policies in Section 10.1 the interest of all of the Owners shall be insured by the same insurance companies provided such policies are available on a commercially reasonable basis. In the case of any insurance policy covering the Owners jointly, the Owners shall apportion the premium based on the manner in which the insurance company or a third party acceptable to all of the Owners apportions such premiums. Such policies may also be issued separately by the same insurance company with respect to each Owner's interest in the Total Property. In the event the Owner of the Residential Property or the Owner of the Commercial Property cannot agree upon the insurance companies to provide the insurance required under Section 10.1 hereof or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall be submitted to arbitration as provided in Article 13 hereof.

10.3 Limits of liability or types of insurance specified in this Article 10 shall be reasonable and prudent for an Owner of a first-class residential facility and/or commercial facility, as applicable, and shall be jointly reviewed by the Owners at least annually. Policy limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration.

10.4 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Copies of such policies shall be delivered upon request. Should an Owner fail to provide and maintain any policy of insurance required under this Article 10 or pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may purchase such policy and the costs thereof (or the Defaulting Owner share of such costs) shall be due from the Defaulting Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment of the Creditor Owner to the date of reimbursement to the Creditor Owner. Additionally, the Creditor Owner shall obtain a lien against the property of the Defaulting Owner, pursuant to Section 12.1 hereinbelow.

10.5 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 benefitted by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in the Declaration, 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 actually collected under such insurance policies, plus deductible amounts.

10.6 Each policy described in Section 10.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide, except for liability insurance described in Section 10.1, by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefitted by such endorsement

UNOFFICIAL COPY

or provision pay such increase; (iii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days, advance written notice shall be sufficient and (iv) shall, if available, provide, except for the liability insurance required under Section 10.1, that all amounts payable thereunder shall be paid to the Depository in accordance with Article 17 hereof. Nothing contained in this Section 10.6 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual or customary form of mortgage clause; provided, however, that a Mortgagee under any Mortgage receiving any proceeds of any insurance policy described in Section 10.1 shall deposit the insurance proceeds with the Depository in accordance with Article 17 to the extent that the Owner of the portion of the Total Property subject to such Mortgage receiving such proceeds would be required to do so, except that such obligation for such deposit by a Mortgagee shall be subject to the following conditions: (a) that at the time of deposit, there shall be no then uncured default under the applicable Mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the Mortgagee, will be at least equal to the cost, as estimated by the Mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

ARTICLE 11

MAINTENANCE, REPAIR & DAMAGE TO THE CONDOMINIUM IMPROVEMENTS AND COMMERCIAL IMPROVEMENTS

11.1 The Owner of the Residential Property, at its sole cost and expense, except to the extent of costs and expenses required to be paid by the Owner of the Commercial Property pursuant to the Declaration and except as otherwise provided in Article 6 hereof, shall keep (a) the Residential Property and all Facilities located therein or for which it is assigned Maintenance responsibility in this Declaration (b) the masonry, footings and foundations of the entire Building, (c) all of the roofs on the Total Property, and (d) the pavement, sidewalks, surfaces, course of driveways and drains forming part of or located on or about the City rights of way adjacent to the Building, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty, or otherwise. The plans and specifications for such repair and reconstruction shall provide for the Residential Improvements to be rebuilt as nearly as commercially practicable to the Residential Improvements as constructed prior to the damage unless prohibited by law or unless the Owner of the Commercial Property otherwise agrees. The Owner of the Residential Property further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in Article 8 of this Declaration, any such costs incurred in accordance with this Section 11.1 shall be paid for by the Owner of the Residential Property.

11.2 The Owner of the Commercial Property shall at its sole cost and expense, except to the extent of costs and expenses required to be paid by the Owner of the Residential Property pursuant to this Declaration and except for Maintenance and other services to be performed by the Owner of the Residential Property pursuant to Section 6.1, keep the Commercial Property and all Facilities located in the Commercial Property in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property whether such said repairs or replacements are to the interior or exterior thereof or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe, first-class working order and

UNOFFICIAL COPY

condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property

11.3 Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred in respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by such Owner.

11.4 If at any time any Owner shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 6 hereof, then (i) the Owner benefitting therefrom may give written notice to the other 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 repair or restoration work is still not proceeding diligently, then such Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation such Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The other Owner in so performing such repair and restoration shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the such Owner plus Default Interest from the date of payment until the date of reimbursement and right to lien Defaulting Owner's portion of the Development Area in accordance with Article 12 hereof and such other rights as provided under Article 11 herein.

11.5 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Residential Improvements only, or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then, except for damage to any portions of the Commercial Property that form part of the exterior facade of the Development Area (excluding windows, doors and associated fixtures which shall be repaired or restored by the Owner of the Commercial Property), which shall be repaired and restored by the Owner of the Residential Property, any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article 18 hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 6 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 18 hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds, plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner and right to lien Defaulting Owner's portion of the Development Area in accordance with Article 12 hereof.

UNOFFICIAL COPY

11.6 If the Improvements are damaged by fire or other casualty and if the provisions of Section 11.5 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clauses (a) or (b) of Section 11.5, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Development Area are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners who are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article 13 hereof. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees, if required.

11.7 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 11.6 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owners' Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

11.8 In any instance of repair or restoration pursuant to Sections 11.6 or 11.7 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional construction, cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 11. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or a loan commitment, reasonably satisfactory to the other Owners and the Mortgagees, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 11.8, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment, plus interest at the Default Rate from the date of payment, by the Creditor Owner to the date of

UNOFFICIAL COPY

reimbursement to the Creditor Owner plus right to lien Defaulting Owner's portion of the Development Area in accordance with Article 12 hereof.

11.9 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Development Area, shall be refunded to the respective Owner or, if applicable, to the Mortgagee holding a Mortgage encumbering the Owner's respective portion of the Development Area in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration costs incurred for all repair and restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the afore-described mortgage holder, shall be payable only from each Owner's respective insurance proceeds.

11.10 If any or all of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Mortgagees, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statues, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, subject to the rights of the Mortgagees. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 11.5, 11.6, 11.7, 11.8 and 11.9 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Development Area after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Development Area, to preserve the use of the Easements granted hereunder and to prevent any violations of the applicable ordinances of the City caused by the other party's failure to rebuild.

11.11 For purposes of this Article 11, architects' and engineers' fees, attorneys' fees, consultants' fees, insurance fees, reasonable costs and expenses of institutional lenders incurred in connection with financing repairs or restoration of Improvements for a term of not more than one year, title insurance premiums and other similar construction expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 12

LIENS, RIGHTS AND REMEDIES

12.1 If, at any time, either Owner fails within ten (10) days after notice or demand to pay any sum of money due the other Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 11 or 15, a lien against any condemnation award or insurance proceeds payable to the Defaulting Owner for loss or damage to the portion of the Development Area owned by the Defaulting Owner or otherwise under insurance policies carried pursuant to Article 10 hereof, and (ii) in the event of a default under any Section of this Declaration, a lien against the portion of the Development Area owned by the Defaulting Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 12 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 12.1 shall be subordinate to any first mortgage, first trust deed or other encumbrance constituting a first lien on the portion of the Development Area owned by the Defaulting Owner or other interest of the Defaulting Owner including mortgages of Units.

UNOFFICIAL COPY

Each Owner waives any and all rights to trial by jury in any suit, action or proceeding brought by the other Owner to enforce collection of any monies owed under this Declaration to such other Owner.

12.2 To the fullest extent permitted by law, the provisions of this Article 12 of this Declaration shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit the obligations of the Unit Owners to repair or restore any portion of the Development Area that constitutes the Residential Property. In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Development Area subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of such Residential Property from the Act and not to repair and restore such Residential Property as required by this Declaration, then the other Owners shall have a lien on any insurance proceeds payable for loss or damage to such portion of the Development Area under insurance policies carried pursuant to Article 10 hereof and on any condemnation award pursuant to Article 15, in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Improvements;
- (b) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the Improvements;
- (c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Development Area or any part thereof; and
- (d) the architectural unity and aesthetic appearance of the restored improvements as a first-class, mixed use property.

The lien created by this Section shall be subordinate to any Mortgage on any portion of the Development Area. Such lien shall arise immediately upon the recording of a notice by the Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid the Creditor Owner or the Owner of the portion of the Total Property being withdrawn from the Act and requiring restoration shall have repaired and restored the Improvements on such Owner's portion of the Total Property as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

12.3 Without limiting any equitable remedies to which the other Owners may be entitled, so long as any portion of the Development Area remains subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of such portions of the Development Area equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit as set forth in the applicable Condominium Declaration. Upon payment of such amount for which a Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

UNOFFICIAL COPY

12.4 No conveyance or other divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article 12, and any lien which would have arisen against any property pursuant to this Article 12 had there been no conveyance or divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

12.5 Interest shall accrue on any sums owed by a Defaulting Owner to the Creditor Owner pursuant to this Declaration, and shall be payable from the date which is ten (10) days after demand for any such payment is made until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by MB Financial Bank N.A., in Chicago, Illinois, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then-maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "prime rate" or reasonable equivalent thereof is not announced by MB Financial Bank N.A., and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

12.6 Subject to the limitations set forth in Article 13 of this Declaration, except as expressly provided in this Declaration, the rights and remedies of each Owner provided for in this Article 12 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Except as expressly provided in this Declaration, the Owner of the Commercial Property may enforce, by a proceeding in equity for mandatory injunction, the Owner of the Residential Property's obligation to execute or record any document which the Residential Owner is required to execute under or pursuant to this Declaration. The exercise by an Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

12.8 Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, the Mortgagee of the Mortgage is diligently proceeding to foreclose the Mortgage, then such period in which an action by the Owner of the Commercial Property or Owner of the Residential Property must be commenced shall be further extended for such additional time as may reasonably be necessary in order for the Mortgagee of the Mortgage to obtain possession of the applicable Property.

12.9 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by the Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article 12.

12.10 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article 20 hereof, the Creditor

UNOFFICIAL COPY

Owner in any proceeding arising out of this Article 12, together with full power and authority to compromise any claims out of the terms of this Article 12 and to grant releases.

ARTICLE 13

ARBITRATION

13.1 The following matters shall be submitted for arbitration to the American Arbitration Association the ("AAA") pursuant and subject to the provisions of this Article 13:

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$100,000, which \$100,000 shall mean \$100,000 in 201_ equivalent dollars, which shall not be resolved within sixty (60) days after same have arisen: and

(b) All other matters which are required under this Declaration to be submitted for, or determined by, arbitration.

Any such dispute, claim, controversy or matter is referred to herein as a "Matter." Arbitration of any Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owner and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. The Mortgagee of a Mortgage shall be a party to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagee of a Mortgage hereunder.

13.2 Unless otherwise agreed to in writing by the parties to the arbitration, within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate three (3) arbitrators to resolve the Matter. If the parties fail to designate the arbitrators within such time period, arbitrators shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrators shall be experienced as to the design, construction and/or operation, as the Matter requires, of first-class mixed-use structures similar to the Building. The AAA Commercial Arbitration Rules then in effect shall apply to the arbitration of any Matter, unless the parties mutually agree in writing otherwise.

13.3 The arbitrators shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrators agree upon an expedited or delayed schedule of hearings. Prior to the hearings any Owner may send out requests to compel document production from the Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrators in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Declaration. Subject to the other terms hereof, if any Owner fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitration panel may hear and determine the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner, except that each Owner shall be responsible for its own expenses.

13.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article 13. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any party to the Matter by application to any court of competent jurisdiction for an

UNOFFICIAL COPY

injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any matter is resolved as provided in this Article 13.

13.5 With respect to any Matter subject to arbitration under this Article 13, it is agreed that the arbitration provisions of this Article 13 shall be the sole remedy of the Owners under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. Any award of the arbitrators shall be final and binding upon the Owners and the Mortgagee of the Mortgage and judgment thereon shall be entered by any court having jurisdiction.

13.6 For purposes of this Article 13, "**201 equivalent dollars**" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 201_. The 201_ equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination and (y) the Consumer Price Index for January 1, 2005, and the denominator of which is the Consumer Price Index for January 1, 201_. As used herein, the term "**Consumer Price Index**" shall mean the Consumer Price Index for Urban Wage Earners and the Clerical Workers, City of Chicago, All Items (Base Year 1967 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

ARTICLE 14

UNAVOIDABLE DELAYS

14.1 No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by any Unavoidable Delay and the parties shall proceed in accordance with the terms set forth in Section 2.35 hereof.

ARTICLE 15

CONDEMNATION

15.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Development Area by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 15, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements shall be performed, in accordance with the requirements of this Article 15.

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

UNOFFICIAL COPY

15.3 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking), an Owner reasonably determines that such Owner's portion of the Development Area no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore such Owner's Improvements as may otherwise be required by this Declaration. However, in such case, such Owner shall demolish, repair or restore such Owner's Improvements to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Development Area, but only if the Owner of the other portion of the Development Area affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of such Owner's portion of the Development Area and shall restore such Owner's portion of the Development Area to a slightly and safe condition and in such a manner as to safeguard the other Owner's portion of the Development Area, and to preserve the use of the Easements granted hereunder.

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

ARTICLE 16

ARCHITECT

16.1 The appointment of an architect in accordance with this Article 16 shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Development Area. The Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article 13. The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B141, (the then current edition), entitled "Standard Form Agreement between Owner and Architect." Any Owner may cause any Architect to be replaced if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owners and the 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 diligently or competently in accordance with the Owner-Architect Agreement. If, in the opinion of an Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 16.1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article 13 hereof.

16.2 In any instance when the Architect serving pursuant to Section 16.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Mortgagees. The Architect shall, except in an Emergency Situation,

UNOFFICIAL COPY

afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Mortgagees, an opportunity to furnish information or data or to present such party's views.

16.3 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 the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Defaulting Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the Creditor Owner for any such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to such Creditor Owner and shall also have a lien against the portion of the Development Area owned by the Defaulting Owner in accordance with Article 12 hereof.

ARTICLE 17

DEPOSITARY

17.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 10.1(a) and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

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

17.3 In the event of any casualty loss which affects more than one portion of the Development Area and if each Damaged Parcel is subject to a Mortgage, then the Mortgagees of the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depositary with regard to such funds.

17.4 In the event of any casualty loss which affects more than one portion of the Development Area and if one or more but less than all of the Damaged Parcels is or are encumbered by a Mortgage, then the Mortgagee or Mortgagees of such Mortgage or Mortgages and the Owner or Owners of the

UNOFFICIAL COPY

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

17.5 If none of the provisions of Sections 17.3 or 17.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depositary. Upon the failure of such Owners to appoint the Depositary within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration in accordance with Article 13 hereof and the arbitrators shall appoint the Depositary.

17.6 As to any Damaged Parcel with regard to such funds which shall have been submitted to a Condominium Declaration pursuant to the Act, notwithstanding that any individual Unit purchasers may have granted mortgages or trust deeds encumbering all or any portion or portions of the Damaged Parcel, the right and power of the Owner of such Damaged Parcel to appoint the Depositary under Sections 17.2 through 17.5 shall be exercised solely by the Condominium Association and the Unit purchasers and their mortgagees shall be bound thereby.

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

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

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

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

UNOFFICIAL COPY

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

17.11 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Section 10.1(a) hereof of less than \$50,000.00 or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depositary.

ARTICLE 18

DISBURSEMENTS OF FUNDS BY DEPOSITARY

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

(i) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics Lien Act set forth in 770 ILCS 60/0.01 et seq. (the "Mechanics Lien Act") and any title insurer affording coverage against mechanics liens;

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

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

UNOFFICIAL COPY

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

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

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

(ii) approval by the title insurer, the Owners, the Mortgagees of the Mortgages on portions of the Development Area on which or for the benefit of which Work will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics lien claims relating to Work in place and the continued priority of the lien of the Mortgages securing the Mortgagees whose approval is required above,

the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the owner's certificate and contractors, and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Mortgagees of the Mortgages or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 18.1(a) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

18.2 No contractor, subcontractor, materialmen, engineer, architect or any other person whatsoever, other than the Owner of the Commercial Property and the Owner of Residential Property and the Mortgagees, shall have any interest in or right to any funds held by the Depository; provided, that such funds shall only be used for repair, restoration or demolition as required by this Declaration, except as hereinafter set forth. The Owners, with the written consent of the Mortgagees of the Mortgages, may jointly at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Owners, with the written consent of the Mortgagees of the Mortgages, 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 19

ESTOPPEL CERTIFICATES

19.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner and without the requirement of the payment of a fee, execute, acknowledge and

UNOFFICIAL COPY

deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate ("Estoppel Certificate") in such form as may be reasonably requested. The Owner of any portion of the Development Area which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may limit the statements made in the Estoppel Certificate to (i) the existence of any defaults hereunder and (ii) the amount of any liens capable of being asserted hereunder.

19.2 So long as any portion of the Total Property remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of such portion of the Total Property subject to the Act shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of any portion of the Total Property subject to the Act from an Owner of a portion of the Total Property not subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Property subject to the Act.

ARTICLE 20

CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Development Area is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of the portion of the Development Area subject to the Act, and consents, waivers, approvals and appointments which may be granted by an Owner, shall be exercised by the Condominium Association administering such portion of the Development Area on behalf of the Unit Owners of the Units in such portion of the Development Area, except for such rights or benefits expressly granted to Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners and in the event of any such action taken by a Condominium Association, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by such Condominium Association. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Unit Owners who are members of a Condominium Association shall be taken on behalf of such Condominium Association and all such Unit Owners, solely by such Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the applicable Condominium Declaration or resolution of the board of managers of such Condominium Association. Except as otherwise noted herein, any requirement for any Unit Owner to furnish a notice or deliver a document may also be performed by the Condominium Association of which such Unit Owner is a member. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, Easements or privileges granted by this Declaration for the benefit of the Development Area or any part thereof. All obligations under this Declaration of the Owner of a portion of the Development Area subject to the Act shall be obligations jointly and severally of both the applicable Condominium Association and all Unit Owners in such portions of the Development Area and any lien arising against the Owner of any such portion of the Development Area may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements appurtenant to such portion of the Development Area, which each Unit Owner may discharge in accordance with the provisions of Article 12 hereof.

UNOFFICIAL COPY

ARTICLE 21

ALTERATIONS

21.1 (a) Any Owner (hereinafter in this Article 21, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additional improvements or alterations (hereinafter in this Article 21, "Alterations") to the part of the Improvements within such Altering Owner's portion of the Development Area, provided that such Alterations comply with the balance of this Section 21.1 and all of the other provisions of this Article 21. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations within the meaning of this Article 21. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual Unit Owners.

(b) Unless otherwise provided in Section 21.1(a) and this Section 21.1(b), Alterations shall not be made without the prior written consent of the other Owners if such Alterations will:

(i) unreasonably diminish the benefits afforded to such other Owners by any Easement or unreasonably interrupt such other Owners' use or enjoyment of any Easement;

(ii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Development Area;

(iii) affect Facilities benefiting the other Owners other than minimally or incidentally; or

(iv) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Mortgagees of the Mortgages, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 21.1. If such other Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Mortgagees whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners consent to the proposed alterations, and if, in the good faith opinion of the other Owners or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 21.1(a) or (b), such Owners or Mortgagees (an "Objecting Party") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 21.1(a) or (b) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 21.1(a) or (b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already

UNOFFICIAL COPY

commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 21.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(d) If any matter arises, between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 21.1(a) or (b), then any Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 21.1(a) or (b) hereof.

(e) The Owners, in making Alterations, shall (i) perform all Alterations in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City's building code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Development Area in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portion of the Development Area, but such Owner shall not be liable in any event for damages as a result of any such disturbance.

21.2 Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owners in such application, unless the City or other government agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said Owners shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owners from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

21.3 An Altering Owner performing any Work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the various Parcels which comprise the Development Area and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the portion of the Development Area owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any other portion of the Development Area and agrees to comply with the provisions of Section 20 of the Mechanics Lien Act in connection with giving notice of such "no lien" provision.

ARTICLE 22

NOTICES

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

For Notices to the Owner
of the Residential Property:

Huron Sedgwick Development LLC

UNOFFICIAL COPY

c/o Robert M. Levin
120 North LaSalle Street, 38th Floor
Chicago, IL 60602

For Notices to the Owner of
the Commercial Property:

Huron Sedgwick Development LLC
c/o Robert M. Levin
120 North LaSalle Street, 38th Floor
Chicago, IL 60602

The foregoing notwithstanding, at such time as any portion of the Total Property is submitted to the Act, Notices to the Owner of such portion of the Total Property shall be delivered or mailed, as aforesaid, to any officer, director or managing agent of the applicable Condominium Association to such address as may appear in any public record instead of the addresses set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provision of Section 22.1 hereof.

22.2 So long as any portion of the Total Property remains subject to the Act, (a) the Owner of the other portions of the Total Property may, but shall not be obligated to, give personal notice to any Unit Owner in such portion of the Total Property, notice to the applicable Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property and (b) such Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portion of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.

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

ARTICLE 23

LIMITATION OF LIABILITY

23.1 Each Owner of a portion of the Development Area shall cooperate in the securing and performing of the services as set forth in Article 6 of this Declaration but shall not be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in case of an Emergency Situation.

23.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Development Area: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself

UNOFFICIAL COPY

freed and relieved therefrom as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

23.3 The enforcement of any rights or obligations contained in this Declaration against an Owner of any portion of the Development Area shall be limited to the interest of such Owner in the Development Area. No judgment against any Owner of any portion of the Development Area shall be subject to execution, or be a lien on any assets of, such Owner other than Owner's interest in the Development Area.

23.4 Each Unit Owner shall be responsible for physical damage insurance on any personal property owned by such Unit Owner and stored anywhere on the Commercial Property including, without limitation, automobiles. The Owner of the Residential Property and each Unit Owner hereby waives and releases any and all claims which he may have against the Owner of the Commercial Property, the members of the Board of Directors of the Owner of the Commercial Property and the manager and managing agent of the Commercial Property and their respective employees and agents for any damage to any personal property (except any Facilities which constitute personal property), including without limitation, automobiles located or stored in the Commercial Property and agrees that neither the Owner of the Commercial Property, the members of the Board of Directors of the Owner of the Commercial Property, the manager or managing agent of the Commercial Property or their respective employees or agents shall be considered a bailee of any personal property, including without limitation, automobiles, stored in the Commercial Property and none shall be responsible for the security of such personal property or for any loss or damage thereto.

ARTICLE 24

GENERAL

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

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

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

UNOFFICIAL COPY

24.4 (a) Except as otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees. So long as any portion of the Development Area is submitted to the Act, the Condominium Association administering such portion of the Development Area shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portion of the Development Area, which amendments or termination shall be binding on all Unit Owners. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

(b) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to (i) correct clerical or typographical errors in this Declaration, (ii) comply with any requests of Declarant's mortgage lenders or any entity acquiring mortgages in the secondary mortgage market, (iii) to correct the legal description of the Commercial Property or the Residential Property or (iv) with the consent of the Mortgagee which made Developer's construction loan (the "Construction Lender") to clarify or modify any of the provisions granting Easements to the Commercial Owner. A Special Amendment may also contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Development Area. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Commercial Property and Residential Property. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of the other Owner as proxy or attorney-in-fact, as the case may be. Except with respect to Special Amendments described in Subsection (b), (iv) above which require the consent of the Construction Lender, each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Development Area, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Development Area.

24.5 The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years, subject to amendment or termination as hereinabove set forth in Section 24.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (e) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of George W. Bush, President of the United States, living at the date of this Declaration.

24.6 The provisions of this Declaration shall be construed to the end that the Development Area shall remain a first-class, mixed-use property.

UNOFFICIAL COPY

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

24.8 Easements created hereunder shall not be presumed abandoned by nonuse or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefitted by such Easement states in writing its intention to abandon the Easement or unless the Easement has been abandoned for a period in excess of two (2) years.

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

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

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

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

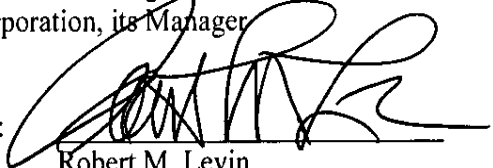
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

UNOFFICIAL COPY

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed this _____ day of April, 2017.

HURON SEDGWICK DEVELOPMENT LLC, an Illinois limited liability company

By: Harris Management, Ltd., an Illinois corporation, its Manager

By: 
Robert M. Levin

Its: President

Property of Cook County Clerk's Office

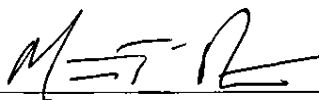
UNOFFICIAL COPY

CONSENT OF MORTGAGEE

MB FINANCIAL BANK, N.A., holder of a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents on the Property, dated November 19, 2015, and recorded on November 20, 2015 as Document Number 1532416018 in the Office of the Cook County Recorder of Deeds, hereby consents to the execution and recording of the within Declaration of Condominium Ownership and agrees that said Mortgage is subject thereto and to the provisions of the Condominium Property Act of the State of Illinois. in the Office of the Cook County Recorder of Deeds hereby consents to the execution and recording of the within Declaration of Condominium Ownership and agrees that said Mortgage is subject thereto and to the provisions of the Condominium Property Act of the State of Illinois.

IN WITNESS WHEREOF, Mortgagee has caused this Consent to be signed by its duly authorized officer on its behalf; all done at Chicago, Illinois, on this 6th day of April, 2017.

MB FINANCIAL BANK, N.A., a national banking association

By: 
Name: Matthew T. Robertson
Title: Senior Vice President

STATE OF ILLINOIS)

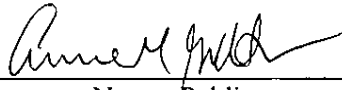
COUNTY OF COOK)
) SS.

I, LAWRENCE M. GRITTON, a Notary Public in and for said County and State, do hereby certify that Matthew T. Robertson, as Senior Vice President of MB Financial Bank, N.A., as such officer, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of April, 2017.

(NOTARY SEAL)




Notary Public
My Commission Expires: 2/19/20

UNOFFICIAL COPY

EXHIBIT A TO DECLARATION OF COVENANTS

LEGAL DESCRIPTION OF DEVELOPMENT AREA

Parcel 1:

Lots 27 and 28 in Block 7 in Higgins Law and Company's Addition to Chicago in the East ½ of the Northwest ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lots 23 to 26, inclusive, in Block 7 in Higgins Law and Company's Addition to Chicago in the East ½ of the Northwest ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Common Property Address: 400-410 West Huron Street, Chicago, IL 60654

PINs:

17-09-120-013-0000

17-09-120-014-0000

UNOFFICIAL COPY

EXHIBIT B TO DECLARATION OF COVENANTS

LEGAL DESCRIPTION OF COMMERCIAL PARCEL

RETAIL PARCEL 1:

THAT PART LOTS 23 TO 28 BOTH INCLUSIVE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +34.26 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.94 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY, IN BLOCK 7 IN HIGGINS LAW AND CO'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 28; THENCE NORTH 90°00'00" WEST ALONG THE SOUTH LINE OF LOTS 27 AND 28 AFORESAID 41.17 FEET; THENCE NORTH 00°01'42" WEST 57.11 FEET; THENCE NORTH 90°00'00" WEST 7.10 FEET; THENCE NORTH 00°01'42" WEST 2.23 FEET; THENCE NORTH 90°00'00" WEST 8.42 FEET; THENCE NORTH 00°01'42" WEST 8.71 FEET; THENCE SOUTH 90°00'00" EAST 56.69 FEET TO A POINT ON THE EAST LINE OF SAID LOT 28; THENCE SOUTH 00°01'42" EAST ALONG THE EAST LINE OF LOT 28 AFORESAID 68.05 FEET TO THE POINT OF BEGINNING; AND

RETAIL PARCEL 2:

THAT PART LOTS 23 TO 28 BOTH INCLUSIVE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.94 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +2.42 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY, IN BLOCK 7 IN HIGGINS LAW AND CO'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT 28; THENCE NORTH 90°00'00" WEST ALONG THE SOUTH LINE OF LOT 28 AFORESAID 17.95 FEET; THENCE NORTH 00°01'42" WEST 20.46 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" WEST 40.57 FEET; THENCE NORTH 00°01'42" WEST 28.75 FEET; THENCE NORTH 90°00'00" WEST 30.31 FEET; THENCE NORTH 00°01'42" WEST 18.84 FEET; THENCE SOUTH 90°00'00" EAST 70.88 FEET; THENCE SOUTH 00°01'42" EAST 47.59 FEET TO THE POINT OF BEGINNING.

Common Property Address:

700 North Sedgwick, Chicago, IL 60654

PIN:

17-09-120-014-0000

UNOFFICIAL COPY

EXHIBIT C TO DECLARATION OF COVENANTS

LEGAL DESCRIPTION OF RESIDENTIAL PARCEL

Parcel 1:

Lots 27 and 28 in Block 7 in Higgins Law and Company's Addition to Chicago in the East ½ of the Northwest ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lots 23 to 26, inclusive, in Block 7 in Higgins Law and Company's Addition to Chicago in the East ½ of the Northwest ¼ of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

EXCEPT:

RETAIL PARCEL 1:

THAT PART LOTS 23 TO 28 BOTH INCLUSIVE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +34.26 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.94 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY, IN BLOCK 7 IN HIGGINS LAW AND CO'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 28; THENCE NORTH 90°00'00" WEST ALONG THE SOUTH LINE OF LOTS 27 AND 28 AFORESAID 41.17 FEET; THENCE NORTH 00°01'42" WEST 57.11 FEET; THENCE NORTH 90°00'00" WEST 7.10 FEET; THENCE NORTH 00°01'42" WEST 2.23 FEET; THENCE NORTH 90°00'00" WEST 8.42 FEET; THENCE NORTH 00°01'42" WEST 8.71 FEET; THENCE SOUTH 90°00'00" EAST 56.69 FEET TO A POINT ON THE EAST LINE OF SAID LOT 28; THENCE SOUTH 00°01'42" EAST ALONG THE EAST LINE OF LOT 28 AFORESAID 68.05 FEET TO THE POINT OF BEGINNING; AND

RETAIL PARCEL 2:

THAT PART LOTS 23 TO 28 BOTH INCLUSIVE, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.94 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +2.42 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY, IN BLOCK 7 IN HIGGINS LAW AND CO'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT 28: THENCE NORTH 90°00'00" WEST ALONG THE SOUTH LINE OF LOT 28 AFORESAID 17.95 FEET; THENCE NORTH 00°01'42" WEST 20.46 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" WEST 40.57 FEET; THENCE NORTH 00°01'42" WEST 28.75 FEET; THENCE NORTH 90°00'00" WEST 30.31 FEET; THENCE NORTH 00°01'42" WEST 18.84 FEET; THENCE SOUTH 90°00'00" EAST 70.88 FEET; THENCE SOUTH 00°01'42" EAST 47.59 FEET TO THE POINT OF BEGINNING.

UNOFFICIAL COPY

Common Property Address: 400-410 West Huron Street, Chicago, IL 60654

PINs: 17-09-120-013-0000
17-09-120-014-0000

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS