

UNOFFICIAL COPY

1/8

04/120-1

This document prepared by
and after recording return to:

Jessica G. Lingertat
Gould & Ratner
222 N. LaSalle Street
Chicago, IL 60601

1712445085

Doc# 1712445085 Fee \$278.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/04/2017 03:38 PM PG: 1 OF 121

ABOVE RESERVED FOR RECORDER

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Elevate Oak Park
Oak Park, Illinois

Ryok

UNOFFICIAL COPY

Table of Contents

RECITALS1

ARTICLE 1 INCORPORATION OF RECITALS2

ARTICLE 2 DEFINITIONS.....2

ARTICLE 3 NORTH BUILDING EASEMENTS9

ARTICLE 4 SOUTH BUILDING EASEMENTS.....13

ARTICLE 5 SERVICES TO BE PROVIDED BY PARCEL OWNERS.....21

ARTICLE 6 STRUCTURAL SUPPORT.....28

ARTICLE 7 COMPLIANCE WITH LAWS; USE; REMOVAL OF LIENS; ZONING30

ARTICLE 8 REAL ESTATE TAXES32

ARTICLE 9 INSURANCE.....34

ARTICLE 10 MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS40

ARTICLE 11 LIENS, RIGHTS AND REMEDIES.....46

ARTICLE 12 ARBITRATION.....49

ARTICLE 13 UNAVOIDABLE DELAYS51

ARTICLE 14 CONDEMNATION.....51

ARTICLE 15 ARCHITECT54

ARTICLE 16 DEPOSITARY.....56

ARTICLE 17 DISBURSEMENTS OF FUNDS BY DEPOSITARY57

ARTICLE 18 ESTOPPEL CERTIFICATES.....59

ARTICLE 19 CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS60

ARTICLE 20 AMENDMENTS TO DECLARATION.....61

ARTICLE 21 ALTERATIONS62

ARTICLE 22 NOTICES.....65

ARTICLE 23 LIMITATION OF LIABILITY69

ARTICLE 24 GENERAL70

ARTICLE 25 PROHIBITED USES72

ARTICLE 26 TERMS FOR RETAIL PARKING IN GARAGE PARCEL IMPROVEMENTS .77

UNOFFICIAL COPY

- EXHIBIT A Legal Description of the Land
- EXHIBIT B Legal Description of the North Apartment Parcel
- EXHIBIT C Legal Description of the North Retail Parcel
- EXHIBIT D Legal Description of the Garage Parcel
- EXHIBIT E Legal Description of the South Apartment Parcel
- EXHIBIT F Legal Description of the South Retail Parcel
- EXHIBIT G Legal Description of the Future Retail Parcel
- EXHIBIT H Plan showing relative locations of the North Retail Parcel, the South Retail Parcel, the Garage Parcel, the North Apartment Parcel, the South Apartment Parcel and the Future Retail Parcel
- EXHIBIT I Sign Locations
- EXHIBIT J Approved way finder and tenant identification signage in the Garage Parcel Improvements
- EXHIBIT K Truck Dock Site Plan

UNOFFICIAL COPY

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

**Elevate Oak Park
Oak Park, Illinois**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made and entered into as of the 1st day of May, 2017, by **LMC OAK PARK HOLDINGS, LLC**, a Delaware limited liability company (the "**Declarant**").

RECITALS

A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the respective meanings set forth in Article 2 hereof (Definitions).

B. Declarant is the fee simple title owner of record of the land located in the Village of Oak Park, Cook County, Illinois, an Illinois home rule municipal corporation (the "**Village**") and are legally described on Exhibit A attached hereto (the "**Land**"). The Land is bounded by Lake Street on the north, Maple Avenue on the west, North Boulevard on the south and is intersected from west to east by Westgate Street.

C. Declarant intends to construct a mixed-use development to be known as Elevate Oak Park on the Land which will consist of: (i) a building containing apartment and retail uses which is adjacent to Lake Street (the "**North Building**"), (ii) a building containing apartment, parking and retail uses which is adjacent to North Boulevard (the "**South Building**"), and (iii) a pedestrian walkway bridge over Westgate Street connecting the North and South Buildings located partially on the Land and partially over the right-of-way of Westgate Street (the "**Pedestrian Bridge**"). The North Building, the South Building, the Land and the Pedestrian Bridge are sometimes collectively referred to herein as the "**Project**".

D. By this Declaration, Declarant is dividing the North Building and the South Building into six (6) legal parcels: the North Retail Parcel, the North Apartment Parcel (within which is located the Pedestrian Bridge), the South Retail Parcel, the Garage Parcel, the South Apartment Parcel and the Future Retail Parcel.

E. The relative locations of the North Retail Parcel, the South Retail Parcel, the Garage Parcel, the North Apartment Parcel, the South Apartment Parcel and the Future Retail Parcel are shown on the Plan attached hereto as Exhibit H.

F. The Project is subject to that certain Redevelopment Agreement between the Village of Oak Park, Cook County, Illinois and Clark Street Development LLC dated June 1, 2014 and recorded with the Recorder on July 24, 2014 as document number 1420516063, as amended by that certain Amended and Restated Redevelopment Agreement between the Village of Oak Park, Cook County, Illinois and Clark Street Development LLC recorded with the Recorder on January 22, 2016 as document number 1602245044, as amended from time to time (the "**RDA**").

UNOFFICIAL COPY

G. Neither the Parcels located in the North Building nor the Parcels located in the South Building are structurally or functionally independent of the other Parcels located in the respective Building and each Parcel depends upon the other Parcel(s) in the Building, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities, systems and components necessary for the operation and use of the North Building and the South Building.

H. Declarant desires by this Declaration to provide for the efficient operation of the Parcels in the Project, to assure the harmonious relationship of the Owners of each Parcel in the Project, and to protect the respective values of each Parcel in the Project, by providing for, declaring and creating certain easements, covenants and restrictions respecting the Project, to the extent provided herein.

NOW, THEREFORE, Declarant hereby declares that the Project 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 Project and each of the foregoing shall run with the land subject to this Declaration.

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, as amended from time to time, in effect as of the date the North Apartment Parcel and/or the South Apartment Parcel may be submitted to the provisions of the Act upon the filing of a condominium declaration.

2.2 “**Anchor Tenant**” means a tenant leasing at least 20,000 square feet in the North Retail Parcel.

2.3 “**Apartment Management Office**” means the on-site management office required under the RDA to be maintained for the Apartment Parcels.

2.4 “**Apartment Parcel(s)**” means either individually, or collectively as the context requires, the North Apartment Parcel and/or the South Apartment Parcel.

2.5 “**Apartment Stairwells**” means those portions of the North Building and the South Building, as the context requires, which contain internal stairwells and corridors that provide (a) ingress/egress to and from the South Apartment Parcel Improvements and/or the North Apartment Parcel Improvements, as the context requires and (b) egress from the Garage Parcel Improvements in

UNOFFICIAL COPY

the event of an Emergency Situation in the South Building, and shall include the shafts, if any, located immediately adjacent thereto.

2.6 “**Architect**” shall have the meaning set forth in Article 15 (Architect) hereof.

2.7 “**Common Walls, Floors and Ceilings**”, if any, means all common structural and partition walls, floors and ceilings now or hereafter situated on or adjoining the (i) North Retail Parcel and/or the North Apartment Parcel and (ii) the South Apartment Parcel and/or the Garage Parcel and/or the South Retail Parcel, as the case may be, and located on any of them but forming the walls, floors or ceilings of the other.

2.8 “**Creditor Owner**” means 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 payment or to perform such duty or obligation as and when required hereunder. An Anchor Tenant may be a Creditor Owner.

2.9 “**Declarant**” has the meaning set forth in the Recitals of this Declaration.

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

2.11 “**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 11.5 hereof.

2.12 “**Defaulting Owner**” 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.

2.13 “**Depository**” means the person or entity from time to time acting pursuant to Article 16 (Depository) of this Declaration.

2.14 “**Downtown Oak Park**” means the entity from time to time acting pursuant to an ordinance that created Special Service Area Number One recorded on December 27, 2007 as document number 0736109066 (“Special Service Area Number One”).

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

2.16 “**Emergency Situation**” means a situation impairing or imminently likely to impair structural support of the Project or any part thereof, or causing or imminently likely to cause bodily injury to persons or substantial physical damage (including, but not limited to, water damage and water leakage) to the Project or any part thereof or any property in, on, under, within, upon or about the Project, or causing or imminently likely to cause substantial economic loss to any Owner. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to

UNOFFICIAL COPY

remedy the Emergency Situation:

2.17 **“Facilities”** means all components, and any replacements or substitutions thereof, of the equipment, systems and the like now or hereafter existing (or constructed or installed) for any part of the Project, including, but not limited to, those relating to chilled and heated water, condenser water, central air handling and fan, temperature control, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, internet service, master antenna, satellite dish, emergency power, telephone, trash storage and removal and other utility and mechanical systems now or hereafter forming a part of any portion of the Project and designed or utilized to furnish utility and other services to any portion of the Project, including but not limited to: air intake valves and ducts (including so-called “black-iron ducts”), annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compactors, compressors (including HVAC units), computers, conduits, controls, control centers, cooling towers, couplers, dampers, devices, ducts, equipment, fans, fixtures, generators, grease traps, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, sump pumps, switches, switchboards, systems, tanks, transformers, valves, wiring and the like. Facilities shall also include the rooms, vaults, closets and other areas where any such equipment may be located, or relocated, in the Project.

2.18 **“Future Retail Parcel”** means the property legally described on Exhibit G attached hereto.

2.19 **“Future Retail Improvements”** means all improvements now or hereafter constructed within and upon the Future Retail Parcel, including without limitation, the columns, structural elements, fixtures, and Facilities now or hereafter located in, on, under, within or upon the Future Retail Parcel. In the event of any reconstruction of the Future Retail Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the Future Retail Improvements shall include any such improvements reconstructed on the Future Retail Parcel.

2.20 **“Garage Management Office”** means the on-site management office required under the RDA to be maintained for the Garage Parcel.

2.21 **“Garage Parcel”** means the property legally described on Exhibit D attached hereto.

2.22 **“Garage Parcel Improvements”** means all improvements now or hereafter constructed within and upon the Garage Parcel, including, without limitation, the columns, structural elements, fixtures, Facilities, the Parking Area, the Garage Management Office, the Parking Ramps, the Parking Area Elevator, storage areas, and walkways now or hereafter located in, on, under, within or upon the Garage Parcel. In the event of any reconstruction of the Garage Parcel Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the Garage Parcel Improvements shall include any such improvements reconstructed on the Garage Parcel.

UNOFFICIAL COPY

2.23 “**Improvements**” means collectively (or individually, as the context requires) the South Apartment Parcel Improvements, the North Apartment Parcel Improvements, the Garage Parcel Improvements, the North Retail Parcel Improvements, the South Retail Parcel Improvements and the Future Retail Parcel Improvements.

2.24 “**Land**” has the meaning set forth in Paragraph B of the Recitals of this Declaration.

2.25 “**Life Safety Systems**” means the life safety systems located in, and serving all or any part of the Project, the fire alarm panel system (including the phone line and sensors) and the fire protection/suppression system (including the sprinkler heads, horns/strobes, pipes, pumps and water supply system).

2.26 “**Maintenance**” or “**Maintaining**” means and includes operating, maintaining, repairing, reconditioning, refurbishing, inspecting, testing, cleaning, painting, installing and replacing when necessary or desirable Facilities or 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.

2.27 “**Mortgage**” means a first mortgage or first trust deed to secure debt, deed of trust or other instrument in the nature thereof which encumbers all or a portion of: the North Retail Parcel, the South Retail Parcel, the Garage Parcel, Future Retail Parcel, if any, the North Apartment Parcel or the South Apartment Parcel as the case may be, as reflected in the Recorder’s records but shall not include a mortgage or trust deed on a condominium unit, if any Parcel has been subjected to the Act.

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

2.29 “**North Apartment Parcel**” means the property legally described on Exhibit B attached hereto.

2.30 “**North Apartment Parcel Improvements**” means all improvements now or hereafter constructed within and upon the North Apartment Parcel, including without limitation, the footings, foundations, columns, piles, structural elements, fixtures, Facilities, the Pedestrian Bridge, the North Building Elevators, North Building Green Roof, the North Building Deck, the Apartment Stairwells located in the North Building, sidewalks, walkways and landscaping now or hereafter located in, on, under, within or upon the North Apartment Parcel. In the event of any reconstruction of the North Apartment Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the North Apartment Improvements shall include any such improvements reconstructed on the North Apartment Parcel.

2.31 “**North Building**” shall have the meaning set forth in Paragraph C of the Recitals of this Declaration.

2.32 “**North Building Deck**” means the improvements and landscaping constructed on the

UNOFFICIAL COPY

roof of the North Building designated for the exclusive use of the Occupants of the North Apartment Parcel for outdoor seating, gathering and any other lawful use.

2.33 “**North Building Elevators**” means the elevators located in, and serving, the North Apartment Improvements.

2.34 “**North Building Green Roof**” means the improvements, soil and landscaping constructed on the roof of the North Building and designed to obtain LEED status for the North Building.

2.35 “**North Retail Parcel**” means the property legally described on Exhibit C attached hereto.

2.36 “**North Retail Parcel Improvements**” means all improvements now or hereafter constructed within and upon the North Retail Parcel, including without limitation, the columns, structural elements, fixtures, facilities, the North Retail Loading Area now or hereafter located in, on, under, within or upon the North Retail Parcel. In the event of any reconstruction of the North Retail Parcel Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the North Retail Parcel Improvements shall include any such improvements reconstructed on the North Retail Parcel.

2.37 “**North Retail Loading Area**” shall mean that portion of the North Retail Parcel designated for the loading and unloading of the North Retail Parcel and the North Apartment Parcel. The North Retail Loading Area includes the overhead door serving same as well as the mechanical equipment necessary to operate the overhead door. The Owner of the North Retail Parcel shall have the exclusive use of the easterly loading dock/berth of the North Retail Loading Area (the “**East Dock**”) and the Owner of the North Apartment Parcel shall have the exclusive use of the westerly loading dock/berth of the North Retail Loading Area (the “**West Dock**”). The Owners of the North Retail Parcel and the North Apartment Parcel shall, in good faith, cooperate with each other with regard to the operation of the one (1) overhead door serving the North Retail Loading Area by the Occupants of the two Parcels and each Owner shall have the key and/or access code to open and close the overhead door. The East Dock is identified on Exhibit K attached hereto as the Eastern Truck Dock and the West Dock is identified on Exhibit K attached hereto as the Loading Area.

2.38 “**Occupant**” means any Person, resident of an Apartment Parcel or tenant of a Retail Parcel having the legal right to use a portion of such Parcels for a period of time.

2.39 “**Owner**” means the Person or Persons whose estates or interests individually or collectively, aggregate fee simple absolute ownership of any one of: the North Retail Parcel, the South Retail Parcel, the Garage Parcel, the North Apartment Parcel or the South Apartment Parcel. The term Owner does not include a person who is only a Mortgage Holder or, subject to Article 19 below, the owner of a condominium unit. The term “**Owners**” means collectively the Owners of all of the Parcels. Ownership of a Parcel includes ownership all of the Improvements constructed or included within such Parcel.

UNOFFICIAL COPY

2.40 **"Parcel(s)"** means, collectively and individually, as the context requires, the North Retail Parcel, the North Apartment Parcel, the South Retail Parcel, the Garage Parcel, the South Apartment Parcel and the Future Retail Parcel.

2.41 **"Parking Area"** means that part of the Garage Parcel containing the parking spaces, the Parking Ramps and the access driveways serving the parking spaces and Parking Ramps.

2.42 **"Parking Area Elevator"** means that part of the Garage Parcel containing the elevator that exclusively serves the Parking Area, including the elevator pit and mechanical rooms serving said elevator.

2.43 **"Parking Ramps"** means that part of the Garage Parcel containing the up and down ramps that allow access between the various floors of the Parking Area.

2.44 **"Pedestrian Bridge"** shall have the meaning set forth in the Recitals of this Declaration. The Pedestrian Bridge shall be for the exclusive use of the Occupants of the North Apartment Parcel for ingress and egress to the Garage Parcel.

2.45 **"Permittee"** means an officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee or contractor of an Owner or the Declarant.

2.46 **"Person"** shall mean any natural person, corporation, partnership, limited liability company, trust or other legal entity capable of holding title to real property.

2.47 **"Project"** shall have the meaning set forth in the Recitals of this Declaration.

2.48 **"PUD"** shall mean Village of Oak Park ordinance number 13-135 G 080315 titled An Ordinance Granting a Special Use Permit for a Major Planned Development for a Mixed Use Multiple Purpose Building Development with Residential, Commercial and Public Parking at the Property located at 1123-1133 Lake Street, 1133-1145 Westgate Street and 1100 North Boulevard, as amended from time to time.

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

2.50 **"Retail Parcel(s)"** means collectively (or individually, as the context requires) the North Retail Parcel, the South Retail Parcel and/or the Future Retail Parcel.

2.51 **"RDA"** shall have the meaning set forth in the Recitals of this Declaration.

2.52 **"Sidewalk Gap"** means any part of a paved or unpaved surface area, together with the property thereunder, owned by an Owner and located on a Parcel, which area is adjacent to and located along the perimeter of either the North Building or the South Building and upon which no Improvements (other than pavement or landscaping improvements) have been erected and which

UNOFFICIAL COPY

area has not been dedicated to the Village. An example of a Sidewalk Gap is that part of the paved area, and the real estate thereunder, located on the northerly portion of the North Apartment Parcel between the North Retail Parcel and the sidewalk (and Lake Street) owned by the Village and intended for public use, which Sidewalk Gap was created due to the Village requirement that the North Building, when erected, be set back from the north property line so that its façade is “in line” with the other buildings located to the east of the Project. There is more than one Sidewalk Gap.

2.53 “**South Building**” shall have the meaning set forth in Paragraph C of the Recitals of this Declaration.

2.54 “**South Building Deck**” means the improvements and landscaping constructed on the roof of the Garage Parcel Improvements and designed for the exclusive use of the Occupants of the South Apartment Parcel for outdoor seating, gathering and any other lawful use which may include a spa and swimming pool.

2.55 “**South Building Elevators**” means the elevators located in, and serving, the South Apartment Parcel Improvements and, in an emergency, the Garage Parcel Improvements.

2.56 “**South Building Green Roof**” means the improvements, soil and landscaping constructed on the roof of the Garage Parcel Improvements and designed to obtain LEED status for the South Building.

2.57 “**South Apartment Parcel**” means the property legally described on Exhibit E attached hereto.

2.58 “**South Apartment Parcel Improvements**” means all improvements now or hereafter constructed within and upon the South Apartment Parcel, including without limitation, the footings, foundations, columns, piles, structural elements, fixtures, Facilities, the South Building Elevators, the South Building Green Roof, the South Building Deck, the Apartment Stairwells located in the South Building, sidewalks, walkways and landscaping now or hereafter located in, on, under, within or upon the South Apartment Parcel. In the event of any reconstruction of the South Apartment Parcel Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the South Apartment Parcel Improvements shall include any such improvements reconstructed on the South Apartment Parcel.

2.59 “**South Apartment Loading Area**” means that part of the South Apartment Parcel Improvements designed for the exclusive use of the South Apartment Parcel.

2.60 “**South Retail Parcel**” means the property legally described on Exhibit F attached hereto.

2.61 “**South Retail Improvements**” means all improvements now or hereafter constructed within and upon the South Retail Parcel, including without limitation, the columns, structural elements, fixtures, and Facilities now or hereafter located in, on, under, within or upon the South

UNOFFICIAL COPY

Retail Parcel. In the event of any reconstruction of the South Retail Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the South Retail Improvements shall include any such improvements reconstructed on the South Retail Parcel.

2.62 “**Village**” has the meaning set forth in the Recitals of this Declaration.

ARTICLE 3 NORTH BUILDING EASEMENTS

3.1 Easements over North Apartment Parcel in favor of the North Retail Parcel: The following perpetual Easements in, to, under, over, upon, through and about portions of the North Apartment Parcel in favor of the North Retail Parcel 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) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the North Apartment Parcel and now or hereafter providing support of (i) the North Retail Improvements, and (ii) any Facilities located in the North Retail Parcel with respect to which the Owner of the North Retail Parcel is granted an Easement under this Declaration.

(b) Facilities Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) located in or on the North Apartment Parcel and/or (ii) located in the North Apartment Parcel and directly or indirectly connected to Facilities located in or on the North Retail Parcel (and any replacements thereof) which provide or shall be necessary to provide the North Retail Parcel with any utilities or other services or which may otherwise be necessary to the operation, use and enjoyment of the North Retail Parcel.

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the North Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the North Building, or the subsequent settlement or shifting of any part of the North Building, or surveying errors, any part of the North Retail Improvements encroaches or shall hereafter encroach upon any part of the North Apartment Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the North Retail Improvements continues to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the North Apartment Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the North Retail Parcel (including the Facilities, if any, located on the roof of the North Apartment Parcel) as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 (Structural Support) hereof or to provide the

UNOFFICIAL COPY

services required to be furnished by the Owner of the North Retail Parcel under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the North Retail Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the North Apartment Parcel in order to exit the North Retail Parcel.

(g) Stairwell Easement. A non-exclusive Easement in favor of the Retail Parcels for pedestrian ingress and egress to and from, over, on and through stairwells located on the North Apartment Parcel solely as needed for the exercise of the Facilities Use Easement provided under Section 3.1(b) above.

(h) Sidewalk Gap Easement. A non-exclusive Easement for ingress and egress for a person over, on, across and through any Sidewalk Gap located on the North Apartment Parcel for access to and from the North Retail Parcel and the public sidewalk.

3.2 Easements over North Retail Parcel in favor of the North Apartment Parcel: The following perpetual Easements in, to, under, over, upon, through and about portions of the North Retail Parcel in favor of the North Apartment Parcel are hereby granted.

(a) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the North Retail Parcel and now or hereafter providing support of (i) the North Apartment Improvements, and (ii) any Facilities located in the North Apartment Parcel with respect to which the Owner of the North Apartment Parcel is granted an Easement under this Declaration.

(b) Facilities-Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) located in the North Retail Parcel and/or (ii) located in the North Retail Parcel and directly or indirectly connected to Facilities located in the North Apartment Parcel (and any replacements thereof) which provide or shall be necessary to provide the North Apartment Parcel with any utilities or other services or which may otherwise be necessary to the operation, use and enjoyment of the North Apartment Parcel.

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the North Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the North Building, or the subsequent settlement or shifting of any part of the North Building, or surveying errors, any part of the North Apartment Improvements (including any balconies now or hereafter constructed on or adjacent to the North Apartment Improvements) encroaches or shall hereafter encroach upon any part of the North Retail Parcel. Such Easement permitting encroachments shall

UNOFFICIAL COPY

exist only as long as the encroaching portion of the North Apartment Improvements continues to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the North Retail Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the North Apartment Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.2 or to provide structural support required by Article 6 (Structural Support) hereof or to provide the services required to be furnished by the Owner of the North Apartment Parcel under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the North Apartment Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the North Retail Parcel in order to exit the North Apartment Parcel.

(g) Roof Easement. An Easement over, on and across that portion of the roof of the North Building, for the exclusive use and benefit of the North Apartment Parcel, to erect, construct, maintain and replace the North Building Green Roof and the North Building Deck.

3.3 General Provisions:

(a) Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the North Retail Parcel and/or the North Apartment Parcel shall be subject to such reasonable limitations as the Owner of the North Retail Parcel and/or the Owner of the North Apartment Parcel may, from time to time, impose with respect to 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 North Retail Parcel and/or the North Apartment Parcel and in order to assure the reasonable security of the applicable portion of the North Retail Parcel and/or the North Apartment Parcel; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and shall not preclude ingress, egress or access in an Emergency Situation.

(b) Easements granted, provided for, declared or created under this Article 3 shall burden and be binding upon the North Retail Parcel and/or the North Apartment Parcel, as the case may be, and the Owner of the North Retail Parcel and/or the Owner of the North Apartment Parcel, as the case may be, and shall run in favor of and inure to the benefit of and be appurtenant to the North Retail Parcel and/or the North Apartment Parcel, as the case may be, and each portion thereof.

UNOFFICIAL COPY

(c) The Owner of the North Retail Parcel shall maintain in the Apartment Management Office, at no cost, current copies of such keys, key cards, access codes, combinations and solutions to any security related device as may be necessary, from time to time, for the Owner of the North Apartment Parcel or the management personnel in the Apartment Management Office, as the case may be, to exercise the applicable Easements granted herein or to access the North Retail Parcel in the event of an Emergency Situation; provided that prior to gaining entry into the North Retail Parcel, the Owner of the North Apartment Parcel shall give the Owner of the North Retail Parcel (and its Occupants) advanced notice (at least 48 hours) of said proposed entry so that the Owner of the North Retail Parcel (and/or its Occupants) is able, if it so chooses, to endeavor to have someone present during such entry (except in the event of an Emergency Situation when the Owner of the North Apartment Parcel shall endeavor, but shall not be required, to give the Owner of the North Retail Parcel (and its Occupants) such notice [which may be telephonic] that is reasonable under the circumstances); and provided further that during any such entry, the Owner of the North Apartment Parcel shall use its commercially reasonable efforts not to disturb the operations and business being conducted in the North Retail Parcel.

(d) With regard to any portion of the North Building over which Easements have been granted pursuant to this Article 3, the Owner of the Parcel burdened by such Easements shall have the right, after consultation with the Owner(s) 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 and such relocation will not result in any cost to or adverse effect on the Owner(s) benefitted by such easement.

(e) With regard to any portion of the North Building over which Easements have been granted pursuant to this Article 3 for ingress and egress in an Emergency Situation, such Easements shall not be deemed to include the interior of any apartment unit.

(f) The grantee of any Easement pursuant to this Article 3 affecting the North Building shall perform any construction, reconstruction, restoration, installation and/or Maintenance pursuant to such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the North Building and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the North Building shall restore or replace, at its sole cost and expense, the adversely affected portion of the North Building to substantially the same condition as existed immediately prior to such construction, reconstruction, restoration, installation and/or Maintenance. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from an Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith plus interest thereon as described in Section 11.5 hereof. The Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

UNOFFICIAL COPY

(g) The Easements granted, declared or created pursuant to this Article 3 hereof shall benefit the Owners of the North Apartment Parcel and the North Retail Parcel and their respective Permittees and Occupants.

ARTICLE 4 SOUTH BUILDING EASEMENTS

4.1 Easements over South Apartment Parcel in favor of the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel: The following perpetual Easements in, to, under, over, upon, through and about portions of the South Apartment Parcel in favor of the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel are hereby granted.

(a) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the South Apartment Parcel and now or hereafter providing support of (i) the Garage Parcel Improvements, and/or the South Retail Improvements and/or the Future Retail Improvements, and (ii) any Facilities located in the Garage Parcel and/or the South Retail Parcel with respect to which the Owner of the Garage Parcel and/or the Owner of the South Retail Parcel and/or the Owner of the Future Retail Parcel, are granted an Easement under this Declaration.

(b) Facilities Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) at any time located in the South Apartment Parcel and/or (ii) at any time located in the South Apartment Parcel and directly or indirectly connected to Facilities at any time located in the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel, (and any replacements thereof) which provide or shall be necessary or desirable to provide the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel, with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel.

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the South Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the South Building, or the subsequent settlement or shifting of any part of the South Building, or surveying errors, any part of the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel encroaches or shall hereafter encroach upon any part of the South Apartment Improvements. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Garage Parcel Improvements and/or the South Retail Improvements and/or the Future Retail Parcel continues to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the South Apartment Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the Garage Parcel and/or the South Retail Parcel and/or

UNOFFICIAL COPY

the Future Retail Parcel, as required or permitted pursuant to 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 6 (Structural Support) hereof or to provide the services required to be furnished by the Owner of the Garage Parcel and/or the Owner of the South Retail Parcel and/or the Owner of the Future Retail Parcel under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the South Apartment Parcel in order to exit the Garage Parcel and/or the South Retail Parcel and/or the Future Retail Parcel.

(g) Sidewalk Gap Easement. A non-exclusive Easement for ingress and egress for a person over, on, across and through any Sidewalk Gap located on the South Apartment Parcel for access to and from the South Retail Parcel and/or the Garage Parcel and/or the Future Retail Parcel and the public sidewalk; and a non-exclusive Easement for ingress and egress for automobiles over, on, across and through any Sidewalk Gap located on the South Apartment Parcel for access to and from the Garage Parcel, the South Retail Parcel and/or the Future Retail Parcel and the public street.

4.2 Easements over Garage Parcel in favor of the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel, if any: The following perpetual Easements in, to, under, over, upon, through and about portions of the Garage Parcel in favor of the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel are hereby granted.

(a) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the Garage Parcel and now or hereafter providing support of (i) the South Apartment Improvements and/or the South Retail Improvements and/or the Future Retail Parcel and (ii) any Facilities located in the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel with respect to which the Owner of the South Apartment Parcel and/or the Owner of the South Retail Parcel and/or the Owner of the Future Retail Parcel is granted an Easement under this Declaration.

(b) Facilities Use Easement: A non-exclusive Easement for the use for their intended purposes of all Facilities (i) at any time located in the Garage Parcel and/or (ii) at any time located in the Garage Parcel directly or indirectly connected to Facilities at any time located in the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel (and any replacements thereof) which provide or shall be necessary or desirable to provide the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel.

UNOFFICIAL COPY

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the South Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the South Building, or the subsequent settlement or shifting of any part of the South Building, or surveying errors, any part of the South Apartment Improvements and/or the South Retail Improvements and/or the Future Retail Parcel (including any balconies now or hereafter constructed on or adjacent to the South Apartment Improvements) encroaches or shall hereafter encroach upon any part of the Garage Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the South Apartment Improvements and/or the South Retail Improvements and/or the Future Retail Parcel continues to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Garage Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.24.2 or to provide structural support required by Article 6 (Structural Support) hereof or to provide the services required to be furnished by the Owner of the South Apartment Parcel and/or the Owner of the South Retail Parcel and/or the Future Retail Parcel under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the Garage Parcel in order to exit the South Apartment Parcel and/or the South Retail Parcel and/or the Future Retail Parcel.

(g) Roof Easement. An Easement over, on and across that portion of the roof of the Garage Parcel, for the exclusive use and benefit of the South Apartment Parcel, to erect, construct, maintain and replace the South Building Green Roof and the South Building Deck.

(h) Stairwell Easement. A non-exclusive Easement in favor of the Retail Parcels and Apartment Parcels for pedestrian ingress and egress to and from, over, on and through stairwells located on the Garage Parcel.

4.3 Easements over the South Retail Parcel in favor of the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel: The following perpetual Easements in, to, under, over, upon, through and about portions of the South Retail Parcel in favor of the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel are hereby granted.

UNOFFICIAL COPY

(a) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the South Retail Parcel and now or hereafter providing support of (i) the Garage Parcel Improvements and/or the South Apartment Improvements and/or the Future Retail Improvements and (ii) any Facilities located in the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel with respect to which the Owner of the Garage Parcel and/or the Owner of the South Apartment Parcel and/or the Future Retail Parcel is granted an Easement under this Declaration.

(b) Facilities Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) at any time located in the South Retail Parcel and/or (ii) at any time located in the South Apartment Parcel and/or the Garage Parcel and/or the Future Retail Parcel and directly or indirectly connected to Facilities at any time located in the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel (and any replacements thereof) which provide or shall be necessary or desirable to provide the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel.

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the South Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the South Building, or the subsequent settlement or shifting of any part of the South Building, or surveying errors, any part of the Garage Parcel Improvements and/or the South Apartment Parcel Improvements and/or the Future Retail Improvements encroaches or shall hereafter encroach upon any part of the South Retail Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Garage Parcel Improvements and/or the South Apartment Improvements and/or the Future Retail Improvement continue to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the South Retail Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.3 or to provide structural support required by Article 6 (Structural Support) hereof or to provide the services required to be furnished by the Owner of the Garage Parcel and/or the Owner of the South Apartment Parcel and/or the Owner of the Future Retail Parcel as the case may be, under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel, and (ii) for the use of such Common Walls, Floors and Ceilings.

UNOFFICIAL COPY

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the South Retail Parcel in order to exit the Garage Parcel and/or the South Apartment Parcel and/or the Future Retail Parcel.

4.4 Easements over the Future Retail Parcel in favor of the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel: The following perpetual Easements in, to, under, over, upon, through and about portions of the Future Retail Parcel in favor of the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel are hereby granted.

(a) Structural Easement. A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components at any time located in or constituting a part of the Future Retail Parcel and now or hereafter providing support of (i) the Garage Parcel Improvements and/or the South Apartment Improvements and/or the South Retail Improvements, and (ii) any Facilities located in the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel with respect to which the Owner of the Garage Parcel and/or the Owner of the South Apartment Parcel and/or the South Retail Parcel is granted an Easement under this Declaration.

(b) Facilities Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) at any time located in the Future Retail Parcel and/or (ii) at any time located in the South Apartment Parcel and/or the Garage Parcel and/or the South Retail Parcel and directly or indirectly connected to Facilities at any time located in the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel (and any replacements thereof) which provide or shall be necessary or desirable to provide the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel.

(c) Encroachment Easement. An exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction of the South Building or any reconstruction or replacement authorized by the terms of this Declaration of any part of the South Building, or the subsequent settlement or shifting of any part of the South Building, or surveying errors, any part of the Garage Parcel Improvements and/or the South Apartment Parcel Improvements and/or the South Retail Improvements encroaches or shall hereafter encroach upon any part of the Future Retail Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Garage Parcel Improvements and/or the South Apartment Improvements and/or the South Retail Improvements continue to exist.

(d) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Future Retail Parcel to the extent reasonably necessary to permit the Maintenance, restoration or reconstruction of the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.3 or to provide structural

UNOFFICIAL COPY

support required by Article 6 (Structural Support) hereof or to provide the services required to be furnished by the Owner of the Garage Parcel and/or the Owner of the South Apartment Parcel and/or the Owner of the South Retail Parcel, as the case may be, under Article 5 (Services) hereof.

(e) Common Wall, Floor and Ceiling Easement. An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

(f) Emergency Situation Easement. A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through any part of the Future Retail Parcel in order to exit the Garage Parcel and/or the South Apartment Parcel and/or the South Retail Parcel.

4.5 Easement over South Apartment Parcel and Garage Parcel in favor of the North Retail Parcel: The following perpetual Easement in, to, under, over, upon, through and about portions of the North Apartment Parcel and the Garage Parcel in favor of the North Retail Parcel are hereby granted.

(a) Facilities Use Easement. A non-exclusive Easement for the use for their intended purposes of all Facilities (i) located in and on the South Apartment Parcel and/or the Garage Parcel and/or (ii) located in and on the South Apartment Parcel and/or the Garage Parcel and directly or indirectly connected to Facilities located in the North Retail Parcel (and any replacements thereof) which provide or shall be necessary to provide the North Retail Parcel with any utilities or other services or which may otherwise be necessary to the operation, use and enjoyment of the North Retail Parcel.

4.6 Easement over Garage Parcel and Related Right for the Benefit of the North Apartment Parcel, the South Apartment Parcel, the North Retail Parcel, the South Retail Parcel and the Future Retail Parcel. The following perpetual Easements in, to, under, over, upon, through and about portions of the Garage Parcel and related covenants, rights and interests in favor of the North Apartment Parcel, the South Apartment Parcel, the North Retail Parcel, the South Retail Parcel and the Future Retail Parcel are hereby granted.

(a) Ingress and Egress Easement. A non-exclusive Easement for ingress and egress over, on, across and through the Garage Parcel to the extent reasonably necessary to provide pedestrian and vehicular access to the Parking Area.

(b) Parking Easement and Related Rights for North Apartment Parcel and South Apartment Parcel. A non-exclusive Easement for the Owner of the North Apartment Parcel and the Owner of the South Apartment Parcel to provide parking to Occupants of the North Apartment Parcel and South Apartment Parcel, at then-current monthly rates, within the Parking Area in the Garage Parcel. The perpetual, non-exclusive right of Occupants of the North Apartment Parcel and South Apartment Parcel to have access to reasonably priced, fee-based parking within the Parking Area is integral to the success of the Project in its entirety. Accordingly, the Owner of the North Apartment Parcel and the Owner of the South Apartment Parcel shall have the exclusive right to operate the

UNOFFICIAL COPY

Parking Area on behalf of the Garage Owner for so long as the Apartment Parcels and Parking Area shall exist as a part of the Project. The Owner of the North Apartment Parcel and the Owner of the South Apartment Parcel shall have the right to engage an experienced third-party management company to conduct the day-to-day operation of the Parking Area.

(c) Parking Easement and Related Rights for the North Retail Parcel, the South Retail Parcel and the Future Retail Parcel. A non-exclusive Easement for the Owner of the North Retail Parcel, the Owner of the South Retail Parcel and the Owner of the Future Retail Parcel to provide parking to Occupants of the North Retail Parcel, South Retail Parcel and the Future Retail Parcel subject to availability after accounting for all outstanding monthly and daily parking passes issued for the Parking Area and otherwise on the terms and conditions provided in Article 26 hereof.

4.7 General Provisions.

(a) Each Easement created under this Article 4 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the South Apartment Parcel and/or the Garage Parcel and/or the South Retail Parcel shall be subject to such reasonable limitations as the Owner of the South Apartment Parcel and/or the Owner of the Garage Parcel and/or the Owner of the South Retail Parcel may, from time to time, impose with respect to 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 South Apartment Parcel and/or the Garage Parcel and/or the South Retail Parcel and in order to assure the reasonable security of the applicable portion of the South Apartment Parcel and/or the Garage Parcel and/or the South Retail Parcel provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and shall not preclude ingress, egress or access in an Emergency Situation.

(b) Easements granted, provided for, declared or created under this Article 4 shall burden and be binding upon the South Apartment Parcel, the Garage Parcel and the South Retail Parcel, and the Owner of the South Apartment Parcel, the Owner of the Garage Parcel and the Owner of the South Retail Parcel, and shall run in favor of and inure to the benefit of and be appurtenant to the South Apartment Parcel, the Garage Parcel and the South Retail Parcel.

(c) The Owner of the Garage Parcel and the Owner of the South Retail Parcel shall maintain in the Apartment Management Office, at no cost, current copies of such keys, key cards, access codes, combinations and solutions to any security related device as may be necessary, from time to time, for the Owner of the South Apartment Parcel, the Owner of the Garage Parcel or the management personnel in the Apartment Management Office or the Garage Management Office, as the case may be, to exercise the applicable Easements granted herein or to access the Garage Parcel or the South Retail Parcel in the event of an Emergency Situation; provided that prior to gaining entry into the South Retail Parcel and/or the Garage Parcel, the Owner of the South Apartment Parcel shall give the Owner of the South Retail Parcel (and its Occupants) and/or the Garage Parcel advanced notice (at least 48 hours) of said proposed entry so that either the Owner of the South Retail Parcel (and its Occupant) and/or the Garage Parcel, as applicable, is able, if it so chooses, to endeavor to have someone present during such entry (except in the event of an

UNOFFICIAL COPY

Emergency Situation when the Owner of the South Apartment Parcel shall endeavor, but shall not be required, to give the Owner of the South Retail Parcel [and its Occupants] such notice [which may be telephonic] that is reasonable under the circumstances); and provided further that during any such entry, the Owner of the South Apartment Parcel shall use its commercially reasonable efforts not to disturb the operations and business being conducted in the South Retail Parcel and/or the Garage Parcel.

(d) With regard to any portion of the South Building over which Easements have been granted pursuant to this Article 4, the Owner of the Parcel burdened by such Easements shall have the right, after consultation with the Owner(s) 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 and such relocation will not result in any cost to or adverse effect on the Owner(s) benefitted by such easement.

(e) With regard to any portion of the South Building over which Easements have been granted pursuant to this Article 4 for ingress and egress in an Emergency Situation, such Easements shall not be deemed to include the interior of any apartment unit.

(f) The grantee of any Easement pursuant to this Article 4 affecting the South Building shall perform any construction, reconstruction, restoration, installation and/or Maintenance pursuant to such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Project and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the South Building shall restore or replace, at its sole cost and expense, the adversely affected portion of the South Building to substantially the same condition as existed immediately prior to such construction, reconstruction, restoration, installation and/or Maintenance. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from an Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith plus interest thereon as described in Section 11.5 hereof. The Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

(g) The Easements granted, declared or created pursuant to this Article 4 hereof shall benefit the Owners of the South Apartment Parcel, the South Retail Parcel and the Garage Parcel and their respective Permittees and Occupants.

ARTICLE 5

SERVICES TO BE PROVIDED BY PARCEL OWNERS

5.1 Owner of the South Apartment Parcel. The Owner of the South Apartment Parcel shall furnish or cause to be furnished the following services, at its sole cost and expense, except to the extent provision is made herein in Section 5.1-(o) below for the sharing of the costs and expenses incurred, when, as and if required:

UNOFFICIAL COPY

(a) Street Level Pavement. To the extent not provided by Downtown Oak Park or a successor entity or other party contracted by the Village and/or the Village itself (or required to be performed by the Owner of the Garage Parcel pursuant to this Article 5), Maintenance of the sidewalks and other street level pavement adjacent to the South Building, including the removal of snow and ice from such areas and keeping such areas free from loose garbage and debris and obstructions to pedestrian or vehicular traffic;

(b) Landscaping. To the extent not provided by Downtown Oak Park and/or the Village, Maintenance of all planters, trees, flowers, shrubs, ground cover, if any, and other landscaping and planting materials now or hereafter located or planted outside the South Building, as necessary to maintain such items in a neat, healthy and slightly condition consistent with a mixed-use building, excluding any standalone landscaping planters erected and/or installed by any other Owner.

(c) South Apartment Parcel Facade. The Owner of the South Apartment Parcel shall provide all Maintenance required to the South Apartment Parcel Improvements facade including, without limitation, the Pedestrian Bridge (to the extent not maintained by the Owner of the North Apartment Parcel) light fixtures, canopies, awnings and any other attached items in compliance with all laws. The Owners of the South Retail Parcel and the Garage Parcel shall cooperate with the Owner of the South Apartment Parcel, in a reasonable manner, to permit such Maintenance;

(d) Utilities. Heating, ventilating, air conditioning, lighting, electricity, plumbing and the Facilities and equipment therefor located in or serving the South Apartment Improvements;

(e) Life Safety Systems Facilities. Maintenance of the sprinkler heads, pipes and the Life Safety Systems Facilities located in the South Apartment Improvements;

(f) Communications Facilities. Maintenance and monitoring of the communication Facilities installed in the South Apartment Improvements;

(g) Apartment Stairwells. Maintenance of the Apartment Stairwells located in the South Building and the corridors connecting same including, but not limited to, keeping same in a clean and slightly condition, free of all loose garbage and debris.

(h) South Building Elevators. Maintenance, monitoring and periodic testing of the South Building Elevators.

(i) Sump Pump. Maintenance and monitoring of the sump pump and related Facilities serving the South Building;

(j) Water Booster Pumps. Maintenance and monitoring of the water booster pump(s) providing domestic water and related Facilities serving the South Building;

(k) Fire Alarm Panel Testing/Life Safety Systems Pumps. Maintenance, monitoring and periodic testing of (i) the fire alarm panel system that serve the Life Safety Systems Facilities (including the phone line, sensors and outside response companies [i.e. ADT]) and (ii) the

UNOFFICIAL COPY

pumps that are part of the Life Safety Systems Facilities serving the South Building (the "South Building Fire Alarm Panel/Pump Costs"). The Owner of the South Apartment Parcel shall have no obligation to provide this service if the Village allows the South Retail Parcel, the Garage Parcel and the South Apartment Parcel to each have its own, separate fire alarm panel system and pumps in which case each Owner shall provide the Maintenance and monitoring of its own Life Safety Systems Facilities that serve its Improvements.

(l) Water. Domestic water and the meter, Facilities and equipment therefor (including Maintenance and monitoring of same) serving the South Building; provided that unless the Owner of the Garage Parcel and the Owner of the South Retail Parcel are able to have their respective Properties separately metered, submeters shall be installed so that the Owner of the South Retail Parcel and Owner of the Garage Parcel shall pay (or reimburse the Owner of the South Apartment Parcel) for all water used, as measured by the submeter(s).

(m) Green Roof/Deck. Maintenance of all artificial barriers, soil, planters, plants, trees, flowers, shrubs, ground cover, if any, and other landscaping and planting materials now or hereafter located or planted on the roof of the South Building and included in the South Building Green Roof and/or the South Building Deck, as the case may be, as necessary to maintain such items in a neat, healthy and sightly condition and, with regard to the South Building Green Roof, consistent with LEED standards.

(n) South Building Roof. Maintenance of the roof, roof membrane and all structural elements of the roof of the South Building as may be necessary to maintain such items in a good and water tight condition.

(o) Condenser Water System. Maintenance and monitoring of the condenser water system and the Facilities that make up the condenser water system (collectively the "Condenser Water System") located in and on the South Building that provides condenser water for the heating, air conditioning and refrigeration system needs of the North Building and the South Building and the Occupants thereof. The Owner of the South Apartment Parcel shall separately meter and/or submeter the condenser water that is provided to each of the Improvements and the Owner of the North Apartment Parcel, the Owner of the North Retail Parcel, the Owner of the Garage Parcel, the Owner of the South Apartment Parcel, the Owner of the South Retail Parcel and the Owner of the Future Retail Parcel shall pay (or reimburse the Owner of the South Apartment Parcel) for all condenser water used, as measured by the meters and/or submeter(s).

(p) Percentage Share of Costs and Expenses To Paid by the Owners of the South Retail Parcel and Garage Parcel for Services Performed by the Owner of the South Apartment Parcel.

(i) The Owner of the South Retail Parcel shall reimburse the South Apartment Parcel Owner for .60% of the costs and expenses incurred by the South Apartment Parcel Owner for the Maintenance of the following items: street level pavement, landscaping, sump pump, water booster pumps, the South Building Fire Alarm Panel/Pump Costs and the roof of the South Building. The Owner of the Garage Parcel shall reimburse the South Apartment Parcel Owner for 40.54% of the costs and expenses incurred by the South Apartment Parcel Owner for the

UNOFFICIAL COPY

Maintenance of the following items listed above: street-level pavement, landscaping, sump pump, water booster pumps, the South Building Fire Alarm Panel/Pump Costs and the roof of the South Building. The Owner of the Future Retail Parcel shall reimburse the South Apartment Parcel Owner for .31% of the costs and expenses incurred by the South Apartment Parcel Owner for the Maintenance of the following items listed above: street level pavement, landscaping, sump pump, water booster pumps, the South Building Fire Alarm Panel/Pump Costs and the roof of the South Building. Requests for reimbursement shall include reasonably detailed evidence of said costs. Notwithstanding anything to the contrary contained in this Declaration, if the roof of the South Building is damaged by the improvements located on the South Building Green Roof and/or the South Building Deck (or the use of the South Building Green Roof and/or the South Building Deck), the cost of Maintaining the roof of the South Building so damaged shall be borne one hundred (100%) percent by the South Apartment Parcel Owner with no contribution by the other Owners.

(ii) In the event that the Owner of the South Apartment Parcel determines that the costs and expenses that will be incurred to provide any of the Services for which the Owners of the South Retail Parcel and the Garage Parcel are required to pay their percentage shares are estimated to exceed \$25,000.00 then the Owner of the South Apartment Parcel shall use its commercially reasonable efforts to obtain a good faith estimate of same, together with such evidence supporting such estimated cost as the Owner of the South Retail Parcel and/or the Garage Parcel may reasonably require, and the Owner of the South Retail Parcel and the Garage Parcel shall pay their percentage shares of said estimated cost in advance and within sixty (60) days after receipt of such estimate and supportive evidence; provided that if the actual cost of said expense is less than the estimated cost paid by the Owner of the South Retail Parcel and/or the Garage Parcel, then the South Apartment Parcel Owner shall refund the Owner of the South Retail Parcel and/or the Garage Parcel, as the case may be, the excess amount paid; provided further that if the actual cost of said expense is more than the estimated cost paid by the Owner of the South Retail Parcel and/or the Garage Parcel, as the case may be, then the Owner of the South Retail Parcel and the Garage Parcel shall pay the South Apartment Parcel Owner the difference within sixty (60) days after receipt of an invoice for same and supportive evidence.

(iii) Prior to the end of each and every calendar year during the time period this Declaration is in full force and effect, the Owner of the South Apartment Parcel shall provide the Owners of the Garage Parcel and the South Retail Parcel a proposed budget of the costs and expenses described in subsection (i) above for its approval, which approval shall not be unreasonably withheld or delayed so long as the costs and expenses reflected in the budget are commercially reasonable and reflect market rates and shall be given or withheld no later than sixty (60) days after that Owner's receipt of same. The budget shall identify separate cost estimates for the categories of costs reflected therein, plus the administration fee permitted hereunder.

(q) Percentage Share of Costs and Expenses To Paid by the Owners of the North Retail Parcel and the South Retail Parcel for Services Performed by the Owner of the South Apartment Parcel.

(i) The Owner of the North Retail Parcel shall reimburse the South Apartment Parcel Owner for 9.96% of the costs and expenses incurred by the South Apartment

UNOFFICIAL COPY

Parcel Owner for the Maintenance of the Condenser Water System; the Owner of the South Retail Parcel shall reimburse the South Apartment Parcel Owner for .96% of the costs and expenses incurred by the South Apartment Parcel Owner for the Maintenance of the Condenser Water System. Requests for reimbursement shall include reasonably detailed evidence of said costs.

(ii) All payments due under this subsection (q) shall be due within sixty (60) days of a payee Owner's receipt of an invoice for same that includes reasonably detailed evidence of said costs.

(iii) In the event that the Owner of the South Apartment Parcel determines that the costs and expenses that will be incurred to provide any of the Services for which the Owner of the North Retail Parcel and South Retail Parcel is required to pay its percentage share are estimated to exceed \$25,000.00 then the Owner of the South Apartment Parcel shall use its commercially reasonable efforts to obtain a good faith estimate of same, together with such evidence supporting such estimated cost as the Owners of the North Retail Parcel and/or South Retail Parcel may reasonably require, and the Owners of the North Retail Parcel and South Retail Parcel shall pay its percentage share of said estimated cost in advance and within sixty (60) days after receipt of such estimate and supportive evidence; provided that if the actual cost of said expense is less than the estimated cost paid by the Owners of the North Retail Parcel and South Retail Parcel, then the South Apartment Parcel Owner shall refund the Owners of the North Retail Parcel and South Retail Parcel the excess amount paid; provided further that if the actual cost of said expense is more than the estimated cost paid by the Owners of the North Retail Parcel and South Retail Parcel then the Owner of the South Retail Parcel shall pay the South Apartment Parcel Owner the difference within sixty (60) days after receipt of an invoice for same and supportive evidence.

(iii) Prior to the end of each and every calendar year during the time period this Declaration is in full force and effect, the Owner of the South Apartment Parcel shall provide the other Owners a budget of the costs and expenses described in subsection (i) above for its approval, which approval shall not be unreasonably withheld or delayed so long as the costs and expenses reflected in the budget are commercially reasonable and reflect market rates and shall be given or withheld no later than sixty (60) days after receipt of same. The budget shall identify separate cost estimates for the categories of costs reflected therein, plus the administration fee permitted hereunder.

5.2 Owner of the North Apartment Parcel. The Owner of the North Apartment Parcel shall furnish or cause to be furnished the following services, at its sole cost and expense, except to the extent provision is made herein in subsection 5.2 (p) below for the sharing of the costs and expenses incurred, when, as and if required:

(a) Street Level Pavement. To the extent not provided by Downtown Oak Park and/or the Village, Maintenance of the sidewalks and other street level pavement adjacent to the North Building, including the removal of snow and ice from such areas and keeping such areas free from loose garbage and debris and obstructions to pedestrian traffic;

UNOFFICIAL COPY

(b) Landscaping. Maintenance of all planters, trees, flowers, shrubs, ground cover, if any, and other landscaping and planting materials now or hereafter located or planted outside the North Building, as necessary to maintain such items in a neat, healthy and slightly condition consistent with a mixed-use building, excluding any standalone landscaping planters erected and/or installed by any other Owner.

(c) North Apartment Parcel Facade. The Owner of the North Apartment Parcel shall provide all Maintenance required to the North Apartment Parcel Improvements facade including, without limitation, the Pedestrian Bridge (to the extent not maintained by the Owner of the South Apartment Parcel), light fixtures, canopies, awnings and any other attached items in compliance with all laws. The Owner of the North Retail Parcel shall cooperate with the Owner of the North Apartment Parcel, in a reasonable manner, to permit such Maintenance.

(d) Utilities. Heating, ventilating, air conditioning, lighting, electricity, plumbing and the Facilities and equipment therefor located in or serving the North Apartment Improvements;

(e) Life Safety Systems Facilities. Maintenance of the sprinkler heads, pipes and the Life Safety Systems Facilities located in the North Apartment Improvements;

(f) Communications Facilities. Maintenance and monitoring of the communication Facilities installed in the North Apartment Improvements;

(g) Apartment Stairwells. Maintenance of the Apartment Stairwells located in the North Building and the corridors connecting same including, but not limited to, keeping same in a clean and slightly condition, free of all loose garbage and debris.

(h) North Building Elevators. Maintenance, monitoring and periodic testing of the North Building Elevators.

(i) Sump Pump. Maintenance and monitoring of the sump pump and related Facilities serving the North Building;

(j) Water Booster Pumps. Maintenance and monitoring of the water booster pump(s) providing domestic water and related Facilities serving the North Building;

(k) Fire Alarm Panel Testing/Life Safety Systems Pumps. Maintenance, monitoring and periodic testing of (i) the fire alarm panel system that serve the Life Safety Systems Facilities (including the phone line, sensors and outside response companies [i.e. ADT]) and (ii) the pumps that are part of the Life Safety Systems Facilities serving the North Building (the "North Building Fire Alarm Panel/Pump Costs"). The Owner of the North Apartment Parcel shall have no obligation to provide this service if the Village allows the North Retail Parcel and the North Apartment Parcel to each have its own, separate fire alarm panel system and pumps in which case each Owner shall provide the Maintenance and monitoring of its own fire alarm panel that serve its Improvements.

UNOFFICIAL COPY

(l) Water. Domestic water and the meter, Facilities and equipment therefor (including Maintenance and monitoring of same) serving the North Building; provided that unless the Owner of the North Retail Parcel is able to have its Parcel separately metered, a meter shall be installed so that the Owner of the North Retail Parcel shall be able to pay (or reimburse the Owner of the North Apartment Parcel) for all water used, as measured by the submeter(s).

(m) Green Roof/Deck. Maintenance of all artificial barriers, soil, planters, plants, trees, flowers, shrubs, ground cover, if any, and other landscaping and planting materials now or hereafter located or planted on the North Building Green Roof and/or the North Building Deck, as the case may be, as necessary to maintain such items in a neat, healthy and slightly condition and, with regard to the North Building Green Roof, consistent with LEED standards.

(n) North Retail Loading Area. Maintenance of (i) the North Retail Loading Area (i.e. both the East Dock and the West Dock) and (ii) the overhead door (and the mechanicals serving same) that serve the North Retail Loading Area; provided that the Owner of the North Retail Parcel covenants and agrees to pay fifty percent (50%) of the cost of the Maintenance, repair and replacement of the foregoing (e.g. cleaning, sweeping, light fixtures, utility costs if on a separate meter, dock "bumpers", trash removal, the overhead door, etc.) within sixty (60) days of being invoiced for same, which invoice must be accompanied by reasonably detailed evidence of the costs covered by such invoice.

(o) North Building Roof. Maintenance of the roof, roof membrane and all structural elements of the roof of the North Building as may be necessary to maintain such items in a good and water tight condition.

(p) Percentage Share of Costs and Expenses To Paid by the Owner of the North Building Retail Parcel for Services Performed by the Owner of the North Apartment Parcel.

(i) The Owner of the North Retail Parcel shall reimburse the North Apartment Parcel Owner for 20.24% of the costs and expenses incurred for Maintenance of the following items listed above: street level pavement, landscaping, sump pump, water booster pumps, the North Building Fire Alarm Panel/Pump Costs and the roof of the North Building. Requests for reimbursement shall include reasonably detailed evidence of said costs. Notwithstanding anything to the contrary contained in this Declaration, if the roof of the North Building is damaged by the improvements located on the North Building Green Roof and/or the North Building Deck (or the use of the North Building Green Roof and/or the North Building Deck), the cost of Maintaining the roof of the North Building so damaged shall be borne one hundred (100%) percent by the North Apartment Parcel Owner with no contribution by the other Owners.

(ii) In the event that the Owner of the North Apartment Parcel determines that the costs and expenses that will be incurred to provide any of the Services for which the Owner of the North Retail Parcel is required to pay its percentage share are estimated to exceed \$25,000.00 then the Owner of the North Apartment Parcel shall use its commercially reasonable efforts to obtain a good faith estimate of same, together with such evidence supporting such estimated cost as the Owner of the North Retail Parcel may reasonably require, and the Owner of the North Retail Parcel

UNOFFICIAL COPY

shall pay its percentage share of said estimated cost in advance and within sixty (60) days after receipt of such estimate and supportive evidence; provided that if the actual cost of said expense is less than the estimated cost paid by the Owner of the North Retail Parcel, then the North Apartment Parcel Owner shall refund the Owner of the North Retail Parcel the excess amount paid; provided further that if the actual cost of said expense is more than the estimated cost paid by the Owner of the North Retail Parcel then the Owner of the North Retail Parcel shall pay the North Apartment Parcel Owner the difference.

(iii) Prior to the end of each and every calendar year during the time period this Declaration is in full force and effect, the Owner of the North Apartment Parcel shall provide the Owner of the North Retail Parcel with a proposed budget of the costs and expenses described in subsection (i) above for its approval, which approval shall not be unreasonably withheld or delayed so long as the costs and expenses reflected in the budget are commercially reasonable and reflect market rates and shall be given or withheld no later than sixty (60) days after the Owner's receipt same. The budget shall identify separate cost estimates for the categories of costs reflected therein, plus the administration fee permitted hereunder.

(iii) All payments due under this subsection (p) shall be due within sixty (60) days of a payee Owner's receipt of an invoice for same that includes reasonably detailed evidence of said costs.

5.3 Owner of the Garage Parcel. The Owner of the Garage Parcel shall furnish or cause to be furnished the following services, at its sole cost and expense (except as provided otherwise), when, as and if required:

(a) Parking Area. Maintenance of the Parking Area and Parking Ramps necessary for the clear and unimpeded flow of vehicle traffic within the Garage Parcel Improvements, including the removal of snow and ice from such areas and keeping such areas free from loose garbage and debris and obstructions to vehicular traffic;

(b) Utilities. Heating, ventilating, air conditioning, lighting, electricity, plumbing and the Facilities and equipment therefor, if any, located in or serving the Garage Parcel Improvements;

(c) Life Safety Systems Facilities. Maintenance of the sprinkler heads, pipes and the Life Safety Systems Facilities located in the Garage Parcel Improvements;

(d) Parking Area Elevator. Maintenance, monitoring and periodic testing of the Parking Area Elevator that exclusively serves the Garage Parcel.

(e) Garage Parcel Facade. The Owner of the Garage Parcel shall provide all Maintenance required to the Garage Parcel Improvements facade including, without limitation, light fixtures, canopies, awnings and any other attached items in compliance with all laws. The Owners of the South Retail Parcel and the South Apartment Parcel shall cooperate with the Owner of the Garage Parcel, in a reasonable manner, to permit such Maintenance.

UNOFFICIAL COPY

5.4 Owner of the South Retail Parcel. The Owner of the South Retail Parcel shall furnish or cause to be furnished the following services, at its sole cost and expense, when, as and if required:

(a) Utilities. Heating, ventilating, air conditioning, lighting, electricity, plumbing and the Facilities and equipment therefor located in or serving the South Retail Parcel;

(b) Life Safety Systems Facilities. Maintenance of the sprinkler heads, pipes and the Life Safety Systems Facilities located in the South Retail Parcel;

(c) South Retail Parcel Facade. The Owner of the South Retail Parcel shall provide all Maintenance required to the South Retail Parcel Improvements facade including, without limitation, light fixtures, canopies, awnings and any other attached items in compliance with all laws. The Owners of the Garage Parcel and the South Apartment Parcel shall cooperate with the Owner of the South Retail Parcel, in a reasonable manner, to permit such Maintenance.

5.5 Owner of the North Retail Parcel. The Owner of the North Retail Parcel shall furnish or cause to be furnished the following services, at its sole cost and expense, when, as and if required:

(a) Utilities. Heating, ventilating, air conditioning, lighting, electricity, plumbing and the Facilities and equipment therefor located in or serving the North Retail Parcel;

(b) Life Safety Systems Facilities. Maintenance of the sprinkler heads, pipes and the Life Safety Systems Facilities located in the North Retail Parcel;

(c) North Retail Parcel Facade. The Owner of the North Retail Parcel shall provide all Maintenance required to the North Retail Parcel Improvements facade including, without limitation, light fixtures, canopies, awnings and any other attached items in compliance with all laws. The Owners of the North Apartment Parcel shall cooperate with the Owner of the North Retail Parcel, in a reasonable manner, to permit such Maintenance.

5.6 General Provisions.

(a) An Owner obligated to perform Maintenance of Facilities shall, in replacing Facilities, replace such Facilities with Facilities which are at least substantially equivalent and providing at least substantially the same quality of service as those being replaced. Each Owner shall operate its Facilities and furnish all services as required under this Article 5 in a good and workmanlike manner and in a manner which will provide each Owner with comfortable occupancy and enjoyment of its respective portion of the Project for its intended use.

(b) If any Owner fails to perform its obligations under this Article 5 (except where such failure is caused by an Unavoidable Delay [as defined in Article 13 hereof]), and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, the Creditor Owner shall have the right to take possession and control of and to operate, maintain, repair and replace the portion of the Defaulting Owner's portion of the applicable Building and the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency

UNOFFICIAL COPY

Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to this Section 5.6 (b), 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 plus interest thereon as described in Section 11.5 hereof, and the Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

(c) If any Owner fails to pay any sum of money due under this Article 5 to another Owner, the Creditor Owner, in addition to any other rights or remedies the Creditor Owner may have, shall obtain a lien against the Parcel owned by the Defaulting Owner to the extent of such unpaid amounts and interest, subject to and in accordance with Section 11.1 hereof.

(d) Nothing in this Declaration shall prohibit the Owner of the North Retail Parcel from (i) granting an Anchor Tenant the right to exercise the Owner of the North Retail Parcel's rights under this Declaration or (ii) obligating an Anchor Tenant to perform the obligations of the Owner of the North Retail Parcel under this Declaration. However, notwithstanding any such granting or obligating described in this subsection, 5.6 (d), the Owner of the North Retail Parcel shall remain obligated to perform the obligations of the Owner of the North Retail Parcel.

(e) Nothing shall prevent an Expense Owner from charging an administrative fee to a payee Owner with regard to an expense a payee Owner is obligated to reimburse an Expense Owner under this Article 5 provided that said administrative fee shall not exceed three (3%) percent per annum of the aggregate annual expense (excluding the administrative fee, utility charges and the portion of single purpose expenditures that exceed \$50,000 provided that the third party out of pocket costs incurred by the Expense Owner with regard to the meter/submeter that measures the utility charges may be subject to the three [3%] percent administrative fee) owed by a payee Owner.

(f) An Expense Owner shall have the right to invoice a payee Owner for its applicable percentage share of said expense (and/or utility costs) quarterly, semi-annually or annually, which invoice must be accompanied by reasonably detailed evidence of the costs covered by said invoice and shall be paid by the payee Owner no later than sixty (60) days after its receipt of said invoice and evidence. In the event an Expense Owner fails to invoice a payee Owner for an expense owed by a payee Owner under this Article 5 within three (3) years after the date said expense was incurred, the Expense Owner shall be deemed to have waived its right to collect said expense from that payee Owner for that calendar year.

ARTICLE 6 STRUCTURAL SUPPORT

6.1 Structural Integrity: No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the North Building or the South Building.

UNOFFICIAL COPY

6.2 Provisions Applicable When Structural Support Has Been Reduced and Structural Safety of Improvements Is Endangered Not As a Result of a Casualty Under Article 10 or Condemnation Under Article 14.

(a) In the event the Owner or Owners responsible for the reduction of structural support or endangerment of structural safety cannot be determined, which determination shall be made by the Architect; then the Owner or Owners benefitted by the structural support shall be responsible for construction in accordance with plans and specifications timely approved by (except insofar as the provisions of Article 21 (Alterations) would not require such approval) the Owners of the portions of the Project affected thereby and the Architect. The costs and expenses incurred in connection with the design and construction of such substitute or additional support shall be allocated to the Owner or Owners benefitted thereby in proportion to the relative benefits to be derived by such Owner(s) from such substitute or additional support, as determined by the Architect and expressed as a percentage for each such Owner.

(b) In the event the Owner or Owners responsible for the reduction of structural support or endangerment of structural safety can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications timely approved by (except insofar as the provisions of Article 21 (Alterations) would not require such approval) the Owners of the portions of the Project affected thereby and the Architect. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners responsible for the reduction or endangerment in proportion to the relative degree of culpability of such Owner(s) in causing the reduction or endangerment, as determined by the Architect and expressed as a percentage for each such Owner.

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

(d) If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners shall be determined as responsible for such construction, any Owner of the affected portion of the Project may, upon not less than thirty (30) days advance written notice to the other Owners (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 or Owners shall be liable for and pay all costs and expenses incurred as a result of any Owner's providing any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners for substitute or additional support, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of any portion of the Project during any period of reconstruction.

UNOFFICIAL COPY

ARTICLE 7

COMPLIANCE WITH LAWS; USE; REMOVAL OF LIENS; ZONING

7.1 Compliance with Laws and Insurance Rating Requirement.

(a) Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements without reference to conflicts of laws now or hereafter enacted or promulgated by the United States of America, the State of Illinois, the County of Cook, the Village of Oak Park and any other entity or agency now or hereafter having jurisdiction of the Project or any portion thereof, (including but not limited to the RDA, the PUD and the ordinance that created Special Service Area Number One) if non-compliance by it with respect to its portion of the Project or any part thereof would subject the other Owners to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owners or for the Improvements themselves, or would jeopardize the other Owner's right to occupy or utilize beneficially its portion of the Project or any part thereof, or would result in the imposition of a lien against any of the property of the other Owners or would increase costs of insurance of the other Owners or would impose any threat or danger to any person or property; and

(b) Owners shall each comply with all rules, regulations and requirements without reference to conflicts of laws of any insurance rating bureau having jurisdiction of the Project or any portion thereof or the requirements of any insurance policy affecting insurance coverage on the other Owner's portion of the Project if non-compliance by it with respect to its portion of the Project or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owners or the premiums of any policy of insurance maintained by both Owners, or (ii) render the other Owner's portion of the Project uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring the Project or the other Owner's portion of the Project; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in the other Owner's portion of the Project, such other Owners whose use, possession, management or activities result in the necessity of such compliance shall be liable for the cost and expense of such compliance. Notwithstanding anything to the contrary set forth herein, this Section 7.1(b) shall not apply to insurance policies of individual unit owners if any Parcel has been made subject to the Act.

(c) If at any time an Owner so obligated to comply with Sections 7.1(a) and Section 7.2 (b) shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect the other Owners, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and if upon expiration of ten (10) days after the receipt of such notice, any such cure of the non-compliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and

UNOFFICIAL COPY

expenses by Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.5 hereof, and the Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

7.2 Removal of Mechanics Liens. An Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, materialmen's or any other like lien on the other Owner's portion of the Project, or on its portion of the Project if the existence or foreclosure of such lien on its portion of the Project would adversely affect any Easement hereunder or services to be furnished pursuant to Article 5 hereof (Services), arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner. In the event a Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor 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 the Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.5 hereof, and the Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), if the Defaulting Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Creditor Owner either: (A) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (B) other security reasonably acceptable to the Creditor Owner. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, or (ii) final judgment is entered on behalf of the lien claimant, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i) or (ii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time after the end of said 10-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

7.3 Indemnification. Each Owner (hereinafter in this Section 7.3, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners and such Owner's officers, employees, agents and volunteers (collectively hereinafter in this Section 7.3, 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 arising from: (i) the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of

UNOFFICIAL COPY

the Project or activities therein, or (ii) the use, exercise or enjoyment of an Easement by the Indemnifying Owner or its tenants, guests or invitees, and from and against all costs, attorneys' 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.

7.4 Compliance with the PUD and RDA. No Owner shall make any Alterations (as that term is defined in Article 21) or allow any use of their respective portions of the Project or take or fail to take any other action which would violate applicable law, including the provisions of the PUD and/or the RDA, or any other agreements in effect from time to time hereafter and applicable to the Project or any portion thereof.

7.5 Use of Sidewalks. Subject to compliance with applicable laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements, nothing in this Declaration shall prevent the Owner of the North Retail Parcel, and/or the Owner of the South Retail Parcel from granting to any tenant or occupant of the North Retail Improvements and/or the South Retail Improvements the right to maintain an outdoor seating/sales area on the sidewalks located on, or surrounding, the North Retail Parcel and/or the South Retail Parcel. This section shall not be construed as granting any tenant or occupant such right until the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel as the case may be, grants same, in writing. The Owner providing said grant shall endeavor, but shall not be required, to give notice of any such grants to all other Owners.

ARTICLE 8 REAL ESTATE TAXES

8.1 Each Owner Responsible for Paying Real Estate Taxes When All Parcels Are Separately Taxed. The Owners shall make good faith efforts and cooperate with each other so that the North Apartment Parcel, the South Apartment Parcel, the Garage Parcel, the North Retail Parcel, the South Retail Parcel and the Future Retail Parcel (whether the Future Retail Improvements are erected thereon or not) shall, as soon as possible after this Declaration is recorded, be assigned separate real estate tax index numbers from the Assessor ("Assessor") of the County of Cook, State of Illinois and receive separate real estate tax bills from the County of Cook, State of Illinois. In the event the North Apartment Parcel and/or the South Apartment Parcel are submitted to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each condominium unit. At such time as the North Apartment Parcel, the South Apartment Parcel, the Garage Parcel, the North Retail Parcel, the South Retail Parcel and the Future Retail Parcel have been assigned separate real estate tax index numbers from the Assessor and received separate real estate tax bills from the County of Cook, State of Illinois, each Owner of a Parcel shall be

UNOFFICIAL COPY

responsible for payment of the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Parcel owned by it.

8.2 Payment of Real Estate Taxes Before Parcels Are Separately Taxed. From and after this Declaration is recorded and until such time as all Parcels in the Project, have been assigned separate real estate tax index numbers by the Cook County Assessor and received separate real estate tax bills from the County of Cook, State of Illinois, Declarant (and if the Declarant is no longer an Owner, then the Owner of the North Apartment Parcel) shall be responsible for paying all real estate taxes assessed and levied against the Project and collecting from each Owner of Parcel in the Project such Owner's share of the real estate taxes billed. The percentage share of the total real estate tax bills payable by each Owner shall be as follows: the percentage share of the Owner of the North Apartment Parcel shall be 17.98%; the percentage share of the Owner of the South Apartment Parcel shall be 42.57%; the percentage share of the Owner of the Garage Parcel shall be 31%; the percentage share of the Owner of the North Retail Parcel shall be 4.76%; the percentage share of the Owner of the South Retail Parcel shall be .46%; and the percentage share of the Owner of the Future Retail Parcel shall be .24% (each a "**Percentage Share(s)**"). The Percentage Shares have been calculated based on the square footages of the Improvements erected on each Parcel and shall be equitably adjusted, based on the square footages of the Improvements actually erected on each Parcel and/or the provisions in the balance of this Article 8 are operative if the Garage Parcel is, or is not, exempt from real estate taxes. Declarant shall pay the combined tax bills for the Project prior to their due date. Declarant shall invoice the Owners of the Parcels for their percentage share of the real estate taxes (such invoices shall be due within ten (10) days after sending. If an Owner shall fail to pay its percentage share of real estate taxes after invoice from Declarant, then Declarant shall have the rights of a Creditor Owner and may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, plus interest thereon as provided in Section 11.5 hereof, and the Creditor Owner shall also have a lien against the portion of the Project owned by the Defaulting Owner in accordance with Article 11 hereof (Liens, Rights and Remedies).

8.3 Parcel Owners Rights to Contest Assessed Valuation. The right of any Owner to obtain a lowering of the assessed valuation of the Parcel owned by that Owner is subject to any covenants, conditions or restrictions of record and the provisions of the RDA.

ARTICLE 9 INSURANCE

9.1 Insurance Coverages. Each Owner shall procure, maintain and keep, at its sole cost and expense insurance, policies providing the coverages, endorsements and meeting the requirements set forth below.

(a) Property Insurance. Each Owner shall procure, maintain and keep, at its sole cost and expense, its respective portion of the North Building and/or the South Building, as the case

UNOFFICIAL COPY

may be, (including without limitation the foundation) insured under a "special form" property policy for an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof, with a waiver of depreciation. Such policy shall include, if applicable, flood insurance, earthquake insurance and boiler and machinery insurance insuring against loss or damage to that portion of the Project owned by that Owner resulting from any accident covered under a standard boiler and machinery insurance policy. Said policies shall be endorsed with a replacement cost coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable. The insurance coverage for any Parcel submitted to the Act shall comply with the Act.

(b) Loss of Rents Endorsement. The Owners shall each maintain, with respect to the Parcel owned by that Owner, a loss of rents endorsement, in such amounts as shall be determined from time to time by the Owner of that Parcel, naming the Owner of that Parcel as the insured with respect to such coverage except for the Owner of the Garage Parcel.

(c) Commercial General Liability Insurance

(i) Retail Parcel Owners. The Owner of the South Retail Parcel and the Owner of the North Retail Parcel shall separately maintain (if applicable) and carry, at its sole cost and expense, Commercial General Liability Insurance, covering claims for personal and bodily injury and property damage occurring in, on, under, within, upon or about the Parcel owned by that Owner, or as a result of operations, activities or inactivity thereon, insuring against hazards of premises/operation, products and completed operations, contractual liability and personal injury liability in such amounts as may be required by law and as from time to time shall be carried by prudent owners of similar mixed-use buildings, but in all events for limits of not less than \$1,000,000 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 \$5,000,000 Excess Liability coverage which is written on a no less than follow form basis.

(ii) Garage Parcel Owner. The Owner of the Garage Parcel shall separately (if applicable) maintain and carry, at its sole cost and expense, Commercial General Liability Insurance (including Garage Keepers Liability coverage if valet services are provided) covering claims for personal and bodily injury and property damage occurring in, on, under, within, upon or about the Garage Parcel, or as a result of operations, activities or inactivity thereon, insuring against hazards of premises/operation, products and completed operations, contractual liability, personal injury liability, and as from time to time shall be carried by prudent owners of similar mixed-use buildings, but in all events for limits of not less than \$1,000,000 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 \$5,000,000 Excess Liability coverage which is written on a no less than follow form basis.

(iii) Apartment Parcel Owners. The Owner of the North Apartment Parcel and the Owner of the South Apartment Parcel shall separately (if applicable) maintain and carry, at its sole cost and expense, Commercial General Liability Insurance, covering claims for personal and bodily injury and property damage occurring in, on, under, within, upon or about the

UNOFFICIAL COPY

Parcel owned by that Owner, or as a result of operations, activities or inactivity thereon, insuring against hazards of premises/operation, products and completed operations, contractual liability, personal injury liability and as from time to time shall be carried by prudent owners of similar mixed-use buildings, but in all events for limits of not less than \$1,000,000 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 \$5,000,000 Excess Liability coverage which is written on a no less than follow form basis.

9.2 Additional Insureds. If possible, each Owner shall name the other Owners as an additional insured under said Commercial General Liability Insurance provided that if any Parcel is submitted to the Act, under no circumstances shall any other Owner have to name any individual condominium unit owner on the insurance that Owner maintains.

9.3 Selection of Insurance Company. Notwithstanding anything contained in this Article 9 to the contrary, and provided same is available on a commercially reasonable basis as to the entire Project, the insurance required under Article 9 shall be provided by the same insurance company and the Declarant after consultation with the Owners of the North and South Building Parcels shall (i) select the insurance company to provide the insurance required under Article 9, (ii) select the insurance agent or consultant described in Article 9 hereof, and (iii) make the decisions and determinations described in Article 9 hereof; provided, however, that the insurance companies selected and the insurance policies issued by such companies shall at all times comply with the requirements of this Article 9.

9.4 General Provisions.

(a) Insurance policies required by this Article 9 shall be purchased from insurance companies authorized to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-/VII according to the then most current Best's Key Rating Guide or a substantially equivalent rating from a nationally-recognized insurance rating service.

(b) Each of the Owners agrees to cooperate to procure and maintain the insurance policies described in this Article 9.

(c) If any Parcel is subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual condominium units shall be the responsibility of the unit owners and each unit owner's policies (whether property or liability) shall be subject to and consistent with the provisions of this Section 9.4(c). No Owner shall be responsible for any premiums or other costs related to the insurance policies required to be carried by condominium unit owners hereunder.

9.5 Sharing of Costs for Insurance.

(a) North Building. In the event the insurance required under Article 9 can cover the Owners of the North Building jointly under one policy, the Owner of the North Apartment Parcel

UNOFFICIAL COPY

shall be responsible for its respective percent of the premium and the Owner of the North Retail Parcel shall be responsible for its respective percent of the premium; provided that the Owner of the North Apartment Parcel shall be responsible for one hundred percent (100%) of the premiums attributable to the boiler and machinery (including the Life Safety Systems Facilities pump) insurance, if necessary; and each Owner of a Parcel shall be responsible for one hundred (100%) percent of the premiums attributable to the loss of rents insurance applicable to the Parcel it owns. The property premium will be allocated based on the percentage of total Parcel value (as indicated in the policy) to the value (as indicated in the policy) of the Parcel owned by that Owner. The liability premium will be allocated based on the percentage of square feet in that Parcel Improvement to the total square footage of all Improvements in the North Building. In the event the insurance required under Article 9 can cover the Owners of the North Building jointly under one policy, then the Owner of the North Apartment Parcel shall pay the bill(s) for the insurance policies described in this Article 9 (including, without limitation, the loss of rents insurance) and provide the Owner of the North Retail Parcel with evidence of such payment at least thirty (30) days prior to the date any such bill(s) is due. The Owner of the North Retail Parcel shall be responsible for and shall reimburse the Owner of the North Apartment Parcel (within ten (10) days after the demand of the Owner of the North Apartment Parcel therefor) for said Owner's applicable portion of such bill(s) as determined in accordance with this Article 9.

(b) South Building. In the event the insurance required under this Article 9 can cover the Owners of the South Building jointly under one policy, the Owner of the South Apartment Parcel shall be responsible for its respective percent of the premium, the Owner of the Garage Parcel shall be responsible for its respective percent of the premium, and the Owner of the South Retail Parcel shall be responsible for its respective percent of the premium; provided that the Owner of the South Apartment Parcel shall be responsible for one hundred percent (100%) of the premiums attributable to the boiler and machinery (including the Life Safety Systems Facilities pump) insurance, if necessary; and each Owner of a Parcel shall be responsible for one hundred percent (100%) of the premiums attributable to the loss of rents insurance applicable to the Parcel it owns. The property premium will be allocated based on the percentage of total Parcel value (as indicated in the policy) to the value (as indicated in the policy) of the Parcel owned by that Owner. The liability premium will be allocated based on the percentage of square feet in that Parcel Improvement to the total square footage of all Improvements in the South Building. In the event the insurance required under this Article 9 can cover the Owners of the South Building jointly under one policy, then the Owner of the South Apartment Parcel shall pay the bill(s) for the insurance policies described in this Article 9 hereof (including, without limitation, the loss of rents insurance) and provide the other Owners of the South Building with evidence of such payment at least thirty (30) days prior to the date any such bill(s) is due. The other Owners of the South Building shall be responsible for and shall reimburse the Owner of the South Apartment Parcel (within ten (10) days after the demand of the Owner of the South Apartment Parcel therefor) for said Owner's applicable portion of such bill(s) as determined in accordance with this Article 9.

9.6 Requirements for Policies Provided.

(a) Each policy described in this Article 9: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any

UNOFFICIAL COPY

other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall name each Owner as a named insured thereunder and shall set forth each Owner's address for purposes of notices under clause (iii) of this sentence (provided that if any Parcel is subject to the Act, the board of managers of the condominium association for that Parcel, as trustees for each of the condominium unit owners in the respective percentages of ownership interests in the common elements, shall be insured as a named insured on behalf of the Owner of the Parcel submitted to the Act); and (iii) shall endeavor to 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, to any Mortgagee and to the holder of any recorded first mortgage or trust deed encumbering a condominium unit.

(b) Each policy described in this Article 9: (i) shall provide, 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 or provision pays such increase; (ii) shall provide, except for the loss of rents insurance, that all amounts payable thereunder shall be paid to the Depository in accordance with Article 16 (Depository) and Article 21 hereof (Alterations); (iii) shall provide that any insurance proceeds payable under the loss of rents insurance shall be paid to or as directed by the Owner of the North Retail Parcel and the Owner of the South Retail Parcel; and (iv) shall include a manuscript endorsement, to the extent available, stating that: (A) the Owner of the North Retail Parcel and the Owner of the South Retail Parcel, or the Mortgagee of a Mortgage encumbering the North Retail Parcel and the South Retail Parcel shall have the right to settle, adjust and compromise any insurance claim relating to damage to the North Retail Parcel and the South Retail Parcel, or any portion thereof and give receipts therefor without the participation, involvement or consent of any other Owner, or any agent or representative of any of them; (B) any insurance proceeds payable with respect to damage to the North Retail Parcel or the South Retail Parcel, or any portion thereof (including, without limitation, proceeds from loss of rents insurance) shall be paid to the Depository or to or as directed by the Owner of the North Retail Parcel and the Owner of the South Retail Parcel pursuant to this Declaration, without the participation, involvement or consent of any other Owner or any agent or representative of any of them; and (C) any insurance proceeds payable with respect to damage to the Garage Parcel or any portion thereof shall be paid to the Depository or to or as directed by the Owner of the Garage Parcel pursuant to this Declaration, without the participation, involvement or consent of any other Owner or any agent or representative of any of them.

(c) Nothing contained in this Article 9 shall prevent the naming of any person as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that: (i) if any Parcel is subject to the Act, the board of managers of the condominium association of that Parcel, as trustees for each of the condominium unit owners in the respective percentages of ownership interests in the common elements, shall be insured as a named insured on behalf of the condominium unit owners; and (ii) a Mortgagee receiving any proceeds of any insurance policy described in Section 9.1, other than proceeds of loss of rents insurance, shall deposit the insurance proceeds with the Depository in

UNOFFICIAL COPY

accordance with Article 16 (Depositary) and Article 17 (Disbursements Of Funds By Depositary) to the extent that the Owner of the portion of the Project 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 Depositary 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 Architect, to complete the work; and (c) the insurers do not deny liability as to the insureds.

9.7 Limits of liability and Types of Insurance Coverages. The limits of liability and types of coverages specified in this Article 9 shall be reasonable and prudent for an Owner of a mixed-use development similar to the Project and shall be reviewed by the Declarant and the Owners at least annually to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes (including, if applicable, the Act), laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverage or endorsements should be deleted. Replacement cost values shall be reviewed annually. Deductible amounts for insurance required under this Article 9 shall be in such amounts as are customary or prevalent for an Owner of a mixed-use development similar to the Project, provided, however, that no deductibles shall exceed \$100,000.00 (or such other amount mutually agreed to by the Owners), and deductibles shall be on a per occurrence basis. Subject to the terms set forth in this Article 9, such 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 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.

The Owners shall employ an insurance agent or consultant selected by the Declarant after consultations with the Owners to perform such review periodically on their behalf and the cost of employing any such agent or consultant shall be shared by the Owners in the ratio their annual insurance premiums for property insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

9.8 Certificates of Insurance. Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner (or, if applicable, to the condominium association) and to the Mortgagees. Copies of such policies shall be delivered to each Owner upon request. Should an Owner fail to pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and the other Owners may pay the Defaulting Owner's share of such premiums or costs and the Defaulting Owner shall reimburse the Creditor Owner for any such amounts paid by the Creditor Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner as described in Article 11 hereof, and the Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the

UNOFFICIAL COPY

extent of such unpaid costs and expenses and interest, subject to and in accordance with Article 11 hereof.

9.9 Waiver of Claims and Liability for Extra Premiums Based on Uses.

(a) 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 this Declaration, each Owner (including, without limitation, each condominium unit owner) hereby waives all claims for recovery from the other Owners (including, without limitation, the condominium unit owners) for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery actually collected under such insurance policies, plus deductible amounts.

Notwithstanding anything to the contrary contained in this Section 9.9, the above mutual waiver of claims shall not apply to claims for recovery from the Owner of the South Apartment Parcel if the claim is for damage caused by water infiltration into other parts of the South Building caused by water leaking from the pool or any pool Facilities located in the South Building.

(b) In the event an Owner is subject to any loads or extra charges or expenses charged by the insurance carrier, including, without limitation, any general liability load or umbrella liability load as a result of any use or operation of another Owner's Parcel in connection with any insurance policy maintained pursuant to Section 9.1, then the Owner whose use or operation results in such loads, charges or expenses shall be liable therefor.

ARTICLE 10 MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

10.1 Each of the Owners of the Parcels shall have the following obligations for Maintenance and Repair as described below.

(a) Obligations of the North Apartment Parcel Owner. Except as expressly provided below in this Article 10 in the event of fire or other casualty, and without limiting or diminishing any Owners obligations under Article 6 hereof (Structural Support), the Owner of the North Apartment Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by any other Owner pursuant to this Declaration, shall keep the North Building Improvements (including the roof of the entire North Building), the North Building Deck, the North Building Green Roof and all Facilities (and windows) located therein and for which the Owner of the North Apartment Parcel is assigned Maintenance responsibility in this Declaration, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property (including Maintenance), whether said Maintenance, 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 good and safe order

UNOFFICIAL COPY

and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the North Apartment Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to the North Building. Except as otherwise expressly provided in this Declaration, any such costs incurred in accordance with this Article 10 shall be paid for by the Owner of the North Apartment Parcel. Notwithstanding anything contained herein to the contrary, but subject to the terms of Article 9 above, in the event that any other Owner intentionally damages or destroys all or any part of the North Apartment Parcel Improvements (including, without limitation, any Facilities) owned by the Owner of the North Apartment Parcel or for which the Owner of the North Apartment Parcel has easement or other rights or has Maintenance responsibility, the Owner so responsible for the intentional damage shall pay all actual losses, costs and damages incurred by the Owner of the North Apartment Parcel as a result thereof, but in no event shall any other Owner be liable for consequential or punitive damages resulting therefrom.

(b) Obligations of the North Retail Parcel Owner. Except as expressly provided below in this Article 10 in the event of fire or other casualty, and without limiting or diminishing any Owners obligations under Article 6 hereof (Structural Support), the Owner of the North Retail Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by any other Owner pursuant to this Declaration, shall keep the North Retail Parcel Improvements (*excluding* the roof of the North Retail Parcel Improvements, the North Building Deck and North Building Green Roof) and all Facilities (and windows) located therein and for which the Owner of the North Retail Parcel is assigned Maintenance responsibility in this Declaration, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property (including Maintenance), whether said Maintenance, 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 good and safe order and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the North Retail Parcel 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 this Declaration, any such costs incurred in accordance with this Section shall be paid for by the Owner of the North Retail Parcel. Notwithstanding anything contained herein to the contrary, but subject to the terms of Section 9.9 above, in the event that any other Owner intentionally damages or destroys all or any part of the North Retail Parcel Improvements (including, without limitation, any Facilities) owned by the Owner of the North Retail Parcel or for which the Owner of the North Retail Parcel has easement or other rights or has Maintenance responsibility, the Owner so responsible for the intentional damage shall pay all actual losses, costs and damages incurred by the Owner of the North Retail Parcel as a result thereof, but in no event shall any other Owner be liable for consequential or punitive damages resulting therefrom.

(c) Obligations of the South Apartment Parcel Owner. Except as expressly provided below in this Article 10 in the event of fire or other casualty, and without limiting or diminishing any Owners obligations under Article 6 hereof (Structural Support), the Owner of the South Apartment Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by any other Owner pursuant to this Declaration, shall keep the South Building

UNOFFICIAL COPY

Improvements (including the roof of the entire South Building), the South Building Deck, the South Building Green Roof and all Facilities (and windows) located therein and for which the Owner of the South Apartment Parcel is assigned Maintenance responsibility in this Declaration, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property (including Maintenance), whether said Maintenance, 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 good and safe order and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the South Apartment Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to the South Building. Except as otherwise expressly provided in this Declaration, any such costs incurred in accordance with this Section shall be paid for by the Owner of the South Apartment Parcel. Notwithstanding anything contained herein to the contrary, but subject to the terms of Section 9.9 above, in the event that any other Owner intentionally damages or destroys all or any part of the South Apartment Parcel Improvements (including, without limitation, any Facilities) owned by the Owner of the South Apartment Parcel or for which the Owner of the South Apartment Parcel has easement or other rights or has Maintenance responsibility, the Owner so responsible for the intentional damage shall pay all actual losses, costs and damages incurred by the Owner of the South Apartment Parcel as a result thereof, but in no event shall any other Owner be liable for consequential or punitive damages resulting therefrom.

(d) Obligations of the Owner of the Garage Parcel. Except as expressly provided below in this Article 10 in the event of fire or other casualty, and without limiting or diminishing any Owners obligations under Article 6 hereof (Structural Support), the Owner of the Garage Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by any other Owner pursuant to this Declaration, shall keep the Garage Parcel Improvements (*excluding* the roof of the Garage Parcel Improvements, the South Building Deck, and South Building Green Roof) and all Facilities (and windows) located therein and for which the Owner of the Garage Parcel is assigned Maintenance responsibility in this Declaration, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property (including Maintenance), whether said Maintenance, 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 good and safe order and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Garage Parcel 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 this Declaration, any such costs incurred in accordance with this Section shall be paid for by the Owner of the Garage Parcel. Notwithstanding anything contained herein to the contrary, but subject to the terms of Section 9.9 above, in the event that any other Owner intentionally damages or destroys all or any part of the Garage Parcel Improvements (including, without limitation, any Facilities) owned by the Owner of the Garage Parcel or for which the Owner of the Garage Parcel has easement or other rights or has Maintenance responsibility, the Owner so responsible for the intentional damage shall pay all actual

UNOFFICIAL COPY

losses, costs and damages incurred by the Owner of the Garage Parcel as a result thereof, but in no event shall any other Owner be liable for consequential or punitive damages resulting therefrom.

(e) Obligations of the South Retail Parcel Owner. Except as expressly provided below in this Article 10 in the event of fire or other casualty, and without limiting or diminishing any Owners obligations under Article 6 hereof (Structural Support), the Owner of the South Retail Parcel at its sole cost and expense except to the extent of costs and expenses required to be paid by any other Owner pursuant to this Declaration, shall keep the South Retail Parcel Improvements and all Facilities (and windows) located therein and for which the Owner of the South Retail Parcel is assigned Maintenance responsibility in this Declaration, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property (including Maintenance), whether said Maintenance, 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 good and safe order and condition and free from water leakage, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the South Retail Parcel 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 this Declaration, any such costs incurred in accordance with this Section shall be paid for by the Owner of the South Retail Parcel. Notwithstanding anything contained herein to the contrary, but subject to the terms of Section 9.9 above, in the event that any other Owner intentionally damages or destroys all or any part of the South Retail Parcel Improvements (including, without limitation, any Facilities) owned by the Owner of the South Retail Parcel or for which the Owner of the South Retail Parcel has easement or other rights or has Maintenance responsibility, the Owner so responsible for the intentional damage shall pay all actual losses, costs and damages incurred by the Owner of the South Retail Parcel as a result thereof, but in no event shall any other Owner be liable for consequential or punitive damages resulting therefrom.

Obligation to Diligently Repair and Restore 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 the other Owners or services to be furnished to the other Owners under Article 5 hereof (Services), 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 16 hereof (Depositary) be entitled to withdraw any insurance proceeds and any other monies held by the Depositary 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 as described in Article 11 hereof, and the Creditor Owner shall

UNOFFICIAL COPY

obtain a lien to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Article 11 hereof.

10.2 Repair and Restoration Not Covered by Any Other Provision of Article 10. If the Improvements are damaged by fire or other casualty and none of the provisions of this Article 10 are applicable because the nature of the damage is such that it does not fall within any of the categories described in this Article 10, then except as provided below in this Section, the repair and restoration of such damage shall be the joint responsibility of the Owners of the North Building and/or the South Building, as the case may be, depending upon which building is damaged.

(a) Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. Except as provided below in this Section, said repair and restoration shall be performed on behalf of the Owners by a contractor or contractors jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article 12 hereof (Arbitration). The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners otherwise agree. Such plans and specifications 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.

(b) Notwithstanding anything contained herein to the contrary, the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel shall not be obligated to repair or restore any tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel affected by a fire or other casualty if the space was vacant prior to the fire or other casualty or the lease was terminated as a result of the fire or other casualty unless (and only to the extent that) the failure to repair or restore such tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel would materially and adversely affect any Easements in favor of the North Apartment Parcel and/or the South Apartment Parcel and/or the Garage Parcel, as the case may be, or any services to be provided by the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel under this Declaration.

10.3 Obligations To Pay Costs Which Exceed Insurance Proceeds. If the cost and expense of performing any repair and restoration to any Improvements provided for in this Article 10 shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Improvements, then such excess cost and expense shall be allocated to each Owner of the North Building and/or the South Building, as the case may be, based on a percentage equal to the cost and expense of repairing and restoring such Owner's portion of the Improvements in the North Building and/or South Building, as the case may be, divided by the total cost of repairing and restoring all of the Improvements damaged in the North Building and/or South Building, as the case may be.

(a) Required Payments When Estimated Costs Are In Excess of Insurance Proceeds. In any instance of repair or restoration pursuant to this Article 10, 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

UNOFFICIAL COPY

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 of the Improvements damaged in the North Building and/or South Building, as the case may be, demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 10.

(b) Alternative Deposits. 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, an 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, 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.

(c) Remedies For Payment Failure. 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 Article 10; or fails to deliver the security provided for within thirty (30) days after receipt of the other 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 reimbursement to the Creditor Owner as described in Article 11 hereof, and the Creditor Owner shall obtain a lien to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Article 11 hereof.

(d) Disposition of Excess Monies. 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 Improvements shall be refunded to the respective Owner or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's portion of the Improvements in accordance with the terms of such encumbrance.

10.4 Owners Decision Not to Rebuild, Repair or Restore. If any or all of the Improvements for the North Building or the South Building or both are destroyed or substantially damaged and the Owners of the Building affected jointly agree, in writing, not to rebuild, repair or restore the Improvements, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements.

UNOFFICIAL COPY

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, or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's respective portion of the Project in accordance with the terms of such encumbrance. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of this Article 10 are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Project 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 Project, and to prevent any violations of the applicable ordinances of the Village. If the Owners jointly agree, in writing, not to rebuild the Improvements, then the Owners may make provision for (i) sale of the Project by the Owners and distribution of sale proceeds, or (ii) ownership of the Project by the Owners as tenants in common, without the right to sue for partition. Unless the Owners jointly agree, in writing, not to rebuild the Improvements, the Owners shall repair and restore the Improvements in the manner and to the extent set forth in this Article 10.

10.5 For purposes of this Article 10, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 11 LIENS, RIGHTS AND REMEDIES

11.1 If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due the other Owners, 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 a lien against the portion of the Project owned by the Defaulting Owner and a lien against any condemnation award and insurance proceeds payable to 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 11. Any such lien shall arise immediately upon the recording of a notice thereof by the Creditor Owner with the Recorder stating that it is a lien created by this Section of the Declaration. Any such lien shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section 11.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Project or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed recorded against such portion of the Project prior to the time of the recording of the notice of lien described above. Any lien arising under this Section 11.1 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.

11.2 To the fullest extent permitted by law, and if any part of the Project is submitted to the Act, the provisions of Article 10 and this Article 11 shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligations of the condominium unit owners to repair or restore any portion of the Project submitted to the Act, or (ii) the use of insurance

UNOFFICIAL COPY

proceeds to repair or restore any portion of the Project submitted to the Act. In the event of fire or other casualty or act of God or force majeure causing damage to any portion of the Project submitted to the Act which would entitle the owner of any part of the Project submitted to the Act, or any condominium unit owner under the Act, to withdraw all or any part of same from the Act and not to repair and restore same as required by this Declaration, notwithstanding the foregoing sentence, then the Owners of the Project *not* submitted to the Act shall have a lien on that part of the Project submitted to the Act and any insurance proceeds payable for loss or damage to that part of the Project submitted to the Act under insurance policies carried pursuant to Article 9 hereof (Insurance) and on any condemnation award pursuant to Article 14 (Condemnation), in an amount necessary so that said 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 Project or any part thereof; and
- (d) the architectural unity and aesthetic appearance of the restored Improvements as a mixed use property.

The lien provided for in this Section 11.2 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Project or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed recorded against such portion of the Project prior to the time of the recording of the notice of lien described above. Such lien shall arise immediately upon the recording of a notice by said other Owner(s) 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 to said Owner(s), or the owner of the Project submitted to the Act shall have repaired and restored the Improvements located on that part of the Project submitted to the Act 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.

11.3 Subject to the limitations set forth in Article 23 hereof, and without limiting any equitable remedies to which any Owner of the Project *not* submitted to the Act may be entitled, so long as any portion of the Project remains subject to the provisions of the Act, each owner of a condominium unit shall be liable only for such portions of any claim against the owner of the Project submitted to the Act 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 condominium

UNOFFICIAL COPY

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 Owner(s) of the Parcels *not* submitted to the Act 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. In addition to any remedies the Owner(s) of the Project *not* submitted to the Act shall be entitled to, in the event any unit owner defaults in its obligation to pay any amount due hereunder, the condominium association, if any, shall be liable to said Owner(s) for such amount and, upon payment of the same by the condominium association, the condominium association shall be entitled to recover the same from any such unit owner. When any portion of the Project is submitted to the Act, the declaration for such condominium association, shall obligate the condominium association to maintain actions for possession against defaulting condominium unit owners for the benefit of the other unit owners in the manner prescribed by Article IX of the Code of Civil Procedure as provided by the Act.

11.4 No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this Article 11, other than a divestiture resulting from a foreclosure of a mortgage lien that pursuant to Section 11.1 hereof, is superior to the lien arising pursuant to this Article 11:

11.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall accrue and be payable from the date any such sum first is due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the greater of (i) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by Bank of America at Chicago, Illinois (or other major bank in the City of Chicago if Bank of America ceases to exist) as its "prime rate" or "corporate base rate" of interest or a reasonable substitute therefor in the event a "prime rate" or "corporate base rate" is no longer announced, or (b) an annual rate of eighteen percent (18%); provided, however, in no event shall the applicable rate of interest exceed the maximum lawful rate.

11.6 Subject to the limitations set forth in Article 23 hereof, the rights and remedies of an Owner provided for in this Article 11 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, other Owner's obligation to execute or record any document which such other Owners is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

UNOFFICIAL COPY

11.8 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 accrued, or such other shorter period as may be provided by law.

11.9 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a 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 11. A Defaulting Owner shall also pay all costs paid or incurred by a Creditor Owner in connection with filing and enforcing any lien described in this Article 11, and such costs shall be added to the amount of any applicable lien created under this Article 11.

11.10 In the event a Creditor Owner consists of one or more condominium unit owners, then the condominium association, if any, shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article 19 hereof (Condominium Association Acting For unit owners), the Creditor Owner in any proceeding arising out of this Article 11, together with full power and authority to compromise any claims arising out of the terms of this Article 11 and to grant releases.

ARTICLE 12 ARBITRATION

12.1 The following matters shall be submitted for arbitration to the American Arbitration Association (the "AAA") pursuant and subject to the provisions of this Article 12.

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$250,000.00 (in 2017 equivalent dollars) and which shall not be resolved within sixty (60) days after same has arisen; and

(b) All other matters which shall not resolved within sixty (60) days which are required under this Declaration to be submitted for, or determined by, arbitration including: (i) selection of an insurance company or apportionment of insurance premiums; (ii) appointment of a contractor or contractors and (iii) replacement of the Architect; and

(c) Any such dispute, claim, controversy or matter is referred to herein as a "Matter". Arbitration of any Matter shall be initiated by an Owner making a written demand therefor by giving written notice thereof to the other Owners 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.

12.2 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 one (1) arbitrator to resolve the Matter. If the parties fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the

UNOFFICIAL COPY

applicable AAA rules; provided, however, that in any event such arbitrator shall be experienced as to the design, construction and/or operation, as the Matter requires; of developments similar to the Project. Except where contrary to the provisions set forth in this Declaration, the AAA Commercial Arbitration Rules shall apply to the arbitration of any Matter. During the twenty (20) business-day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

12.3 The arbitrator shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrator 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 other Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by the Owners or may be ordered by the arbitrator to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrator 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 an Owner fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrator may hear and determine the Matter upon evidence produced by the appearing Owner. The arbitration fees and costs (filing fees, arbitrators' fees and expenses, court reporter's fees and expenses and transcript fee) shall be borne equally by the Owners, except that each Owner shall be responsible for its own attorneys' fees and witness expenses.

12.4 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 12. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by application to any court of competent jurisdiction for an 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 12.

12.5 With respect to any Matter subject to arbitration under this Article 12, it is agreed that the arbitration provisions of this Article 12 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. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article 12 or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 12 may, at the request of any Owner, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated-factual occurrences. Any award of the arbitrator shall be final and binding upon the Owners and judgment thereon shall be entered by any court having jurisdiction.

UNOFFICIAL COPY

12.6 For purposes of this Article 12, "2017" equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2017. The 2017 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 last published prior to the date on which this Declaration is recorded with the Recorder, and the denominator of which is the Consumer Price Index last published prior to the date on which this Declaration is recorded with the Recorder. 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 1982-84 = 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 13 UNAVOIDABLE DELAYS

13.1 The Owners shall diligently perform their respective obligations under this Declaration. 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 solely requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of terrorism, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner ("Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other Owners, keep the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE 14 CONDEMNATION

14.1 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 Project by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 14, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements thereon shall be performed, in accordance with the requirements of this Article 14.

14.2 All Awards resulting from the taking of all or any part of the Project, other than Awards resulting from a taking for the temporary use of space as hereinafter described, shall be paid

UNOFFICIAL COPY

to the Depository and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Article 5 hereof (Services), each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Project.

14.3 Takings of Only a Part of a Parcel. In the event of (a) a taking (other than a temporary taking) of a part of the North Apartment Parcel only (not affecting services described in Article 5 hereof (Services), except those having minimal or incidental effect), (b) a taking (other than a temporary taking) of a part of the North Retail Parcel only (not affecting services described in Article 5 hereof (Services), except those having minimal or incidental effect), (c) a taking (other than a temporary taking) of a part of the South Apartment Parcel only (not affecting services described in Article 5 hereof (Services), except those having minimal or incidental effect), (d) a taking (other than a temporary taking) of a part of the Garage Parcel only (not affecting services described in Article 5 hereof (Services), except those having minimal or incidental effect) or (e) a taking (other than a temporary taking) of a part of the South Retail Parcel only (not affecting services described in Article 5 hereof (Services), except those having minimal or incidental effect), then, subject to the provisions of Section 14.6 hereof, the Owner of the portion of the Project in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole and to the condition existing immediately prior to the taking, to the extent commercially practicable. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Project in which the taking occurred, provided that such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 17 hereof (Disbursements Of Funds By Depository) and to retain any excess not required for such repair and restoration. Notwithstanding anything contained herein to the contrary, the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel shall not be obligated to repair or restore any tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel affected by a taking if the space was vacant prior to the taking or the lease was terminated as a result of the taking unless (and only to the extent that) the failure to repair or restore such tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel would materially and adversely affect any Easements in favor of the North Apartment Parcel and/or the South Apartment Parcel and/or the Garage Parcel, as the case may be, or any services to be provided by the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel under this Declaration.

14.4 Takings of All or Substantially All of the Project or Either of the North or South Building. In the event of a taking other than (a) a temporary taking described in Section 14.2 hereof, (b) a taking described in Section 14.3 hereof, or (c) a taking of all or substantially all of the Project or (d) a taking of all or substantially all of only one of only one of the two Buildings: either the North Building or the South Building, then, subject to the provisions of Section 14.6 hereof, then except as provided below in this Section 14.4, the Owners of the North Building and/or the South Building so affected shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly and timely approved by the Owners of the North Building and/or the South Building so affected. The plans and specifications for such repair

UNOFFICIAL COPY

and restoration shall be prepared by the Architect, unless the Owners of the North Building and/or the South Building so affected otherwise agree. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements of the North Building and/or the South Building so affected to form an architectural and functional whole with only such changes in the Improvements of the North Building and/or the South Building so affected as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and except as provided below in this Section 14.4, shall be performed on behalf of the Owners of the North Building and/or the South Building so affected by a contractor or contractors jointly selected by the Owners of the North Building and/or the South Building so affected. In the event the Owners of the North Building and/or the South Building so affected fail to agree upon the selection of a contractor or contractors, then the selection shall be made by arbitration pursuant to Article 12 hereof (Arbitration), subject to the Rights of the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel described below in Section 14.5. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Article 3 and Article 4 hereof and for the furnishing of services under Article 5 hereof (Services). Notwithstanding anything contained herein to the contrary Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel shall not be obligated to repair or restore any tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel affected by a taking if the space was vacant prior to the taking or the lease was terminated as a result of the taking unless (and only to the extent that) the failure to repair or restore such tenant improvements or other interior portions of the North Retail Parcel and/or the South Retail Parcel would materially and adversely affect any Easements in favor of the North Apartment Parcel and/or the Garage Parcel and/or the South Apartment Parcel, or any services to be provided by the Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel under this Declaration.

14.5 The Award for any taking described in Section 14.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 14.6 hereof). Each portion of the Award attributable to the North Retail Parcel alone and/or the South Retail Parcel alone and/or the North Apartment Parcel alone and/or the South Apartment Parcel alone and/or the Garage Parcel alone, as the case may be, shall only be utilized to repair and restore that portion of the Project to which it is attributed. Any excess of the Award attributed to a particular portion of the Project over the cost of repair and restoration to that portion of the Project shall then be allocated to the Owner of that portion of the Project, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owner's portion of the Project in accordance with the terms of such encumbrance.

14.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 14.3 hereof), an Owner reasonably determines that the portion of the Project owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 14.3 and 14.3 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Project. Furthermore,

UNOFFICIAL COPY

such Owner shall weatherproof any exposed portions of the Project owned by it and shall restore its portion of the Project to a sightly and safe condition and in such a manner as to safeguard the other portions of the Project; and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 14.4 hereof are applicable.

14.7 In the event of a taking of all or substantially all of the Project or a taking of all or substantially all of either the North Building or the South Building, 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 such Owners in accordance with said apportionment, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owner's respective portions of the Project or Building taken in accordance with the terms of such encumbrance.

14.8 To the fullest extent permitted by law, the provisions of this Article 14 shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligation of the unit owners to repair or restore that part of the Project submitted to the Act in the event of a taking or (ii) the use of the Award as provided in this Article 14; provided that the provisions of the Act shall be controlling over the provisions of this Article 14 insofar as the provisions of this Article 14 purport to change the allocation of the Award to the unit owners in the event a unit or any common elements are taken.

ARTICLE 15 ARCHITECT

15.1 The Owners hereby appoint Fitzgerald Associates Architects Ltd. ("Fitzgerald") to serve as "Architect" for the purposes of this Declaration, pursuant and subject to the terms and provisions of this Declaration. In the event that Fitzgerald is unable or unwilling to serve as the Architect, the Owners of the affected North Building and/or the South Building, as the case may be, 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 as "Architect" under and pursuant to the terms and provisions of this Declaration. In the event the Owners of the affected North Building and/or the South Building, as the case may be, cannot agree upon the appointment of a replacement Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article 12 (Arbitration). An Owner of the affected North Building and/or the South Building, as the case may be, may cause any Architect to be replaced if it demonstrates to the other Owners of the affected North Building and/or the South Building, as the case may be, that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently. In such event, the Owner of the affected North Building and/or the South Building, as the case may be, desiring replacement of the Architect shall serve notice upon the other Owners of the affected North Building and/or the South Building, as the case may be, 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. If, in the opinion of an Owner of the affected North Building

UNOFFICIAL COPY

and/or the South Building, as the case may be, receiving such notice, the Owner of the affected North Building and/or the South Building, as the case may be, desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 15.1, the Owner of the affected North Building and/or the South Building, as the case may be, receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners of the affected North Building and/or the South Building, as the case may be, of its objection in writing within fifteen (15) days after receipt of such notice from the other Owners of the affected North Building and/or the South Building, as the case may be. If, within ten (10) days after receipt by the Owner of the affected North Building and/or the South Building, as the case may be, desiring to replace the Architect of such objection, the Owners of the affected North Building and/or the South Building, as the case may be, do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article 12 hereof (Arbitration).

15.2 In any instance when the Architect serving pursuant to Section 15.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner may submit the same to the Architect. The Owner of the affected North Building and/or the South Building, as the case may be, submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners of the affected North Building and/or the South Building, as the case may be. The Architect shall afford each Owner of the affected North Building and/or the South Building, as the case may be, and any attorney or representative designated by such Owner, an opportunity to furnish information or data or to present such party's views.

15.3 The Architect shall be paid a reasonable fee for any services rendered hereunder, as jointly determined by the Owners of the affected North Building and/or the South Building, as the case may be, and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners of the affected North Building and/or the South Building, as the case may be, 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 of the affected North Building and/or the South Building, as the case may be, 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 the other Owners of the affected North Building and/or the South Building, as the case may be, may pay the same and the Defaulting Owner 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 the Creditor Owner as described in Section 11.5 hereof, and the Creditor Owner shall obtain a lien against the portion of the Project owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

UNOFFICIAL COPY

ARTICLE 16 DEPOSITARY

16.1 The Depositary (defined hereinafter) will receive (or the Owners will cause the Depositary to receive) all insurance proceeds and Awards and shall disburse such monies, and act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds in excess of \$100,000.00 under the insurance policy required to be carried pursuant to Section 9.1 hereof (other than proceeds from loss of rents insurance) and Awards arising in connection with this Declaration shall be deposited with the Depositary. Any insurance proceeds payable under the loss of rents insurance shall be paid to or as directed by the Owner or Owners entitled to the loss of rents insurance proceeds. The "Depositary" shall be Bank of America, or such other entity jointly designated by the Owners of the affected North Building and/or the South Building, as the case may be, to act in such capacity. If Bank of America (or its successor appointed pursuant hereto) shall fail or cease for any reason to act as Depositary, then the Owners of the affected North Building and/or the South Building, as the case may be, shall jointly appoint, as successor Depositary, an entity with offices in Chicago, Illinois and qualified to act as such Depositary in the State of Illinois and having a capital of not less than Five Hundred Million Dollars (\$500,000,000.00).

16.2 Each Owner whose portion of the Project 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 their respective insurance proceeds or respective Awards, as the case may be. Any Depositary appointed to act hereunder shall execute an agreement with the Owner or Owners of the affected North Building and/or the South Building, as the case may be, entitled to withdraw insurance proceeds or Awards held by the Depositary accepting said appointment in form and content acceptable to such Owner or Owners of the affected North Building and/or the South Building, as the case may be, and in accordance with the provisions of this Declaration.

16.3 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 Award or Awards unless the Depositary shall have been given an express written authorization from the Owners of the affected North Building and/or the South Building, as the case may be, provided that, if only one Owner of the affected North Building and/or the South Building, as the case may be, claims said insurance proceeds or Award or Awards, then said Owner alone may authorize the Depositary to so proceed.

16.4 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depositary and the affected Owner or Owners. The Depositary shall, at the direction of the affected Owner or Owners, 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 on the redemption or sale of any

UNOFFICIAL COPY

securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be commingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

16.5 The Depository may resign by serving sixty (60) days' written notice on the Owners of the affected North Building and/or the South Building, as the case may be. Within sixty (60) days after receipt of such notice or in case of failure or inability to act, the affected Owner or Owners shall appoint a substitute who qualifies under Section 16.1 hereof, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the affected Owner or Owners shall fail to appoint a substitute within said sixty (60) days, then the Depository 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 16.1 hereof.

16.6 Notwithstanding anything contained herein to the contrary, any insurance proceeds (other than proceeds of loss of rents insurance) arising out of the policy required to be carried pursuant to Section 9.1 hereof of less than \$100,000 or Awards of less than \$100,000 shall be paid directly to the party so entitled rather than to the Depository. Notwithstanding anything contained herein to the contrary, any insurance proceeds payable under the loss of rents insurance shall be paid to or as directed by the Owner or Owners of the Parcels entitled to such loss of rents insurance proceeds.

ARTICLE 17

DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 Requests for Disbursements. Each request by an Owner or the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds or any Award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

(a) That the sum requested has either (a) been paid by or on behalf of Owners of the affected North Building and/or the South Building, as the case may be, (in which event the certificate shall name such Owner, (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, provided that any amounts payable to the Architect shall be timely approved in writing by the Owner or Owners requesting payment, or (c) the Work has been completed to the Architect's satisfaction and the remaining funds are due the named Owner. 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 laws of the State of Illinois and any title insurer affording coverage, if available, against mechanics liens;

UNOFFICIAL COPY

(b) 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);

(c) 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;

(d) 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; and

(e) That all of the Work so far completed has been completed substantially in accordance with the plans and specifications therefor (if applicable).

17.2 Disbursement to Owners. Upon compliance with the provisions of Section 17.1 (but not more frequently than once in any thirty (30) day period); and

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

(b) approval by the title insurer, if applicable, and the Owner or Owners requesting disbursement, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties), if available, insuring over possible mechanics lien claims relating to Work in place;

(c) the Depository shall, out of the monies so held by the Depository pay or cause to be paid to the Owner or Owners requesting payment, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owners requesting disbursement 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 Architect to the Depository in accordance with the provisions of Section 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.3 No contractor, subcontractor, materialmen, engineer, architect or any other person whatsoever, other than the Owners of the affected North Building and/or the South Building, as the case may be, shall have any interest in or right to any funds held by the Depository. The Owners of the affected North Building and/or the South Building, as the case may be, may jointly at any time provide for a different disposition of funds than that provided for in this Declaration, without the

UNOFFICIAL COPY

necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Owners of the affected North Building and/or the South Building, as the case may be, 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 18 ESTOPPEL CERTIFICATES

18.1 Each Owner shall, from time to time, within ten (10) business days after receipt of written request from another Owner (subject to payment of the fees described below in this Section 18.1, if applicable), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate ("Estoppel Certificate") stating:

- (a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (b) whether there is any existing default hereunder (or, to the responding Owner's knowledge, grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;
- (c) whether there are any sums (other than those arising out of the normal course of operations of the of the North Building and/or the South Building, as the case may be, within the previous forty-five [45] days) which the responding Owner is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;
- (d) whether the responding Owner has performed or is performing Work other than services pursuant to Article 5 hereof (Services), the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such other Owners, and if there is any such Work, specifying the nature and extent thereof;
- (e) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted or otherwise known by the responding Owner against the enforcement of the requesting Owner's rights hereunder;
- (f) the total amount of all liens being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder by the responding Owner under the provisions of this Declaration, and describing the applicable provision or provisions and the details of any such lien claim;

UNOFFICIAL COPY

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

(h) the nature of any arbitration proceeding or finding under Article 12 (Arbitration) made within the ninety (90) days preceding the date of such Estoppel Certificate;

(i) the current address or addresses to which notices given to the responding Owner are required to be mailed under Article 22 hereof (Notices); and

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

18.2 An Owner, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing or leasing of a Parcel, may charge the Owner of the Parcel making the request a commercially reasonable fee for preparing, executing and delivering the Estoppel Certificate; provided that during the two (2) year period following the recording of this Declaration, no Owner may charge another Owner for either of the first (1st) two (2) Estoppel Certificates requested during such period; provided further that from and after the expiration of the two (2) year period following the recording of this Declaration, the first Estoppel Certificate requested by any Owner shall be free.

18.3 If any portion of the Project is subject to the provisions of the Act, an Estoppel Certificate requested from the owner of that part of the Project submitted to the Act shall be issued by the condominium association on behalf of the condominium unit owners and the condominium association and any Estoppel Certificate so issued shall be binding on the condominium unit owners and such condominium association, and an Estoppel Certificate requested by the Owner of that part of the Project submitted to the Act may only be requested by the condominium association on behalf of the condominium unit owner or owners and the condominium association.

ARTICLE 19 CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

Nothing in this Declaration shall prevent any Owner from submitting the portion of the Project owned by it to the Act and any Owner may submit the portion of the Project owned by it to the Act. Any part of the Project submitted to the Act shall be subject to the terms and provisions of this Declaration.

If any portion of the Project is made subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of that part of the Project submitted to the Act, and consents, waivers, approvals and appointments which may be granted by the Owner of that part of the Project submitted to the Act, shall be exercised by the condominium association on behalf of the condominium unit owners, and in the event of any such action taken by the condominium association, the condominium unit owners shall be bound as if the condominium unit owners had expressly consented and agreed to such actions by the condominium association.

UNOFFICIAL COPY

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, shall be taken on behalf of the condominium association and all condominium unit owners, solely by the condominium association by its duly authorized officers acting pursuant to authority granted by law, the condominium declaration or resolution of the board of managers of the condominium association. Any requirement for any condominium unit owner to furnish a notice or deliver a document may also be performed by the condominium association on behalf of such condominium unit owner.

No condominium unit owner or group of condominium 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 that part of the Project submitted to the Act, or any part thereof. All obligations under this Declaration of the owner of that part of the Project submitted to the Act shall be obligations jointly and severally of both the condominium association and all condominium unit owners, and any lien arising against the Owner of that part of the Project submitted to the Act may be imposed against the units of all unit owners based upon their percentages of interest in the common elements appurtenant to that part of the Project submitted to the Act, which each condominium unit owner may discharge in accordance with the provisions of Article 11 hereof (Liens, Rights and Remedies).

ARTICLE 20

AMENDMENTS TO DECLARATION

20.1 Special Amendment. 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; (ii) revise this Declaration and/or revise and/or add to the exhibits attached to this Declaration to reflect "as built" conditions, which "as built" conditions may include, but are not limited to, (a) the elimination, relocation and/or re-creation (due to value engineering or any other reason) of all or any part of the North Building and/or the South Building and/or the Pedestrian Bridge; (b) the elimination, relocation and/or re-creation of rooms and/or amenities that were initially intended to be located in certain areas of the North Building and/or the South Building, as the case may be, to other areas of the North Building and/or the South Building, as the case may be; (c) re-classifying portions of the North Building that are North Apartment Parcel as North Retail Parcel, and/or (d) re-classifying portions of the South Building that are Garage Parcel and/or South Retail Parcel and/or South Apartment Parcel, as the case may be, as Garage Parcel and/or South Retail Parcel and/or South Apartment Parcel, as the case may be, (iii) grant additional Easements (including, without limitation, on, over, under, in, across, through and about any part of the Project before and after it becomes subject to the Act), as may be necessary, in the Declarant's sole judgment in order to effectuate Maintenance, operation and administration of the Project or any portion thereof; (iv) provide for additional services to be furnished by one Owner to the other Owners and for the payment for such services; (v) make such other modifications of, or additions or deletions to, this Declaration as may be necessary, in the Declarant's sole judgment, in order to effectuate the Maintenance, operation and administration of the Project or any portion thereof; (vi) comply with requirements of the Federal National Mortgage

UNOFFICIAL COPY

Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by such entities; (vii) induce any of the agencies or entities described in clause (vi) to make, purchase, sell, insure or guarantee first mortgages covering units; and/or (viii) bring this Declaration into compliance with the Act or Illinois law.

20.2 Power Coupled with an Interest. In furtherance of the Declarant's rights in Section 20.1, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Project, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Declarant to vote in favor of, make, execute and record a Special Amendment. The Special Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of Declarant to act pursuant to rights reserved or granted under this Article 20 shall terminate at such time as Declarant, or any person or entity having a direct or indirect ownership interest in Declarant as of the date hereof, or any entity directly or indirectly owned by any such person or entity no longer holds or controls title to any portion of the Project.

ARTICLE 21 ALTERATIONS

21.1 Alterations

- (a) No installations, alterations or improvements (hereinafter in this Article 21, "Alterations") shall be made to Improvements owned by an Owner without the prior written consent, which consent shall not be unreasonably withheld, of the Owner of the Apartment Parcel of the affected North Building and/or South Building, as the case may be, if such Alterations will:
- (i) diminish the benefits afforded to the other Owner(s) of the affected North Building and/or South Building, as the case may be, by any Easement or interrupt said Owner use or enjoyment, as the case may be, of any Easement;
 - (ii) alter the facade or exterior appearance of Improvements owned by another Owner;
 - (iii) 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 Project, or consist of or involve the drilling, coring, chipping, chopping or otherwise

UNOFFICIAL COPY

making any opening or hole into any primary structural concrete element, including floor slabs and beams or vertical column elements;

(iv) affect any Facilities benefitting the other Owner(s) other than minimally or incidentally;

(v) materially impair or affect the traffic pattern for ingress and egress to and from the Garage Parcel;

(vi) materially degrade or diminish services to be provided to any part of the Project;

(vii) materially increase the costs or expenses for which the Owner of any part of the Project is or would be responsible under this Declaration; or

(viii) materially affect any of Facilities serving other parts of the Project.

Prohibitions and restrictions on Alterations by the Owner of any part of the Project submitted to the Act shall also apply to individual unit owners.

(b) If, at any time, the Owner of any part of the Project proposes to make any Alterations which require or could possibly require the consent of the other Owner(s), then before commencing or proceeding with such Alterations, that Owner shall deliver to the other Owner(s) of the North Building and/or South Building being affected, as the case may be, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 21.1. If the other Owner(s) of the North Building and/or South Building being affected, as the case may be, consents to such Alterations or states that its consent is not required, the requesting Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. If the requesting Owner has not requested consent of the proposed Alterations by the Owner(s) of the North Building and/or South Building being affected, as the case may be, and if, in the good faith opinion of the Owner(s) of the North Building and/or South Building being affected, as the case may be, the other Owner has violated or will violate the provisions of Section 21.1 (a), the Owner(s) of the North Building and/or South Building being affected, as the case may be, shall notify the other Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 21.1 (a), and shall specify the respect or respects in which its provisions are or will be violated. If the Owner(s) of the North Building and/or South Building being affected, as the case may be, in good faith asserts a violation of Section 21.1 (a), then the other Owner shall not commence the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Owner of the North Building and/or South Building being affected, as the case may be, may be entitled by reason of the other Owner's violation or likely violation of the provisions of Section 21.1 (a) the Owner of the North Building and/or South Building being affected, as the case may be, shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

UNOFFICIAL COPY

(c) If any matter arises among the Owners with respect to whether any Alterations or proposed Alterations by any Owner violate the provisions of Section 21.1(a) then any Owner of the North Building and/or South Building being affected, as the case may be, may submit such matter to the Architect for its opinion, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 21.1(a) hereof. If the Owners of the North Building and/or South Building being affected, as the case may be, are unable to resolve any dispute relating to the Alterations or proposed Alterations within thirty (30) days after receipt of the Architect's opinion, the dispute shall be submitted to arbitration in accordance with Article 12 hereof (Arbitration).

(d) The Owner making Alterations shall (i) perform all work in a first-class 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 Village building code, and (iii) comply with all of the applicable provisions of this Declaration. The Owner shall make Alterations 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 parts of the Project.

21.2 Applications for building permits to make Alterations which comply with the provisions of this Article 21 shall be filed and processed by the requesting Owner without the joinder of the other Owners in such application, unless the Village or other government agency having jurisdiction thereof requires joinder of said other Owners of the North Building and/or South Building being affected, as the case may be. If joinder by said other Owner(s) is so required, said other Owner(s) shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Owner making the Alterations shall indemnify and hold harmless the joining Owner(s) from and against any and all losses, liabilities, claims, judgments, costs and expenses arising out of said Owner(s) execution of the application, permit or other instrument.

21.3 The Owner performing the Alterations shall include in any construction contract relating to Alterations or Work a provision pursuant to which the contractor (i) recognizes the separate ownership of the North Apartment Parcel, the North Retail Parcel, the South Apartment Parcel, the Garage Parcel and the South Retail Parcel and agrees that any lien rights which the contractor or subcontractors have under the mechanics lien laws of the State of Illinois shall only be enforceable against that part of North Building and/or South Building respecting which the Alterations or Work is being effected, as the case may be, and (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any other portion of the North Building and/or South Building, and agrees to comply with the provisions of the mechanics lien laws of the State of Illinois in connection with giving notice of such "no lien" provision.

21.4 Notwithstanding anything contained in this Declaration to the contrary, unless an Alteration meets one or more of the criteria described in Section 21.1 (a) above, the consent of any other Owner shall not be required and the terms, provisions and restrictions set forth in this Article 21, or elsewhere in this Declaration, shall not apply to (i) the construction, fixturing, equipping or furnishing of the interior of the North Retail Parcel or the South Retail Parcel or any portion thereof

UNOFFICIAL COPY

(including, without limitation, the construction of any tenant space constructed from time to time within or as part of the North Retail Parcel or the South Retail Parcel), (ii) Alterations to the façade of the North Retail Parcel Improvements or the South Retail Parcel Improvements so long as said Alterations comply with applicable law or (iii) subject to Section 24.17 hereof, the erection of signage on the North Building and/or the South Building if said signage complies with applicable law.

21.5 The grantee of any Easement hereunder affecting the Project or any portion thereof shall perform any construction, reconstruction, restoration, installation and/or Maintenance pursuant to such Easement in such a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Project and surrounding areas as may be practical under the circumstances. Notwithstanding anything contained herein to the contrary, the grantee of any Easement affecting the Project or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Project to substantially the same condition as existed immediately prior to such construction, reconstruction, restoration, installation and/or Maintenance.

21.6 Any Owner shall have the right, at its sole cost and expense, to install antennae, satellite systems and other similar communications facilities on the roof of Improvements owned by that Owner, if and so long as the communications facilities do not interfere with the operation of any other communications facilities previously installed anywhere in the Project. Without limiting the foregoing, the installation of any such communications facilities shall constitute an Alteration under this Article 21.

21.7 Notwithstanding anything contained in this Declaration to the contrary, and except in an Emergency Situation or if required by law, the erection of scaffolding on the sidewalk surrounding the any Improvements will be prohibited unless necessary to renovate the North Building and/or South Building, as the case may be, or to perform any Alteration or required Maintenance.

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 either (i) in person, or (ii) by a nationally known overnight carrier (such as Federal Express or UPS) for delivery on the next business day, all addressed as below stated:

For Notices to the Declarant:

c/o Lennar Multifamily Communities, LLC
1300 E. Woodfield Rd. Suite 304
Schaumburg, Illinois 60173
Attention: Doug Bober

with a copy to:

Lennar Multifamily Communities, LLC
201 South Tryon, Suite 1000
Charlotte, North Carolina 28202

UNOFFICIAL COPY

Attention: Mr. Todd M. Farrell

with a copy to:

Lennar Corporation
700 NW 107th Avenue
Suite 400
Miami, Florida 33172
Attention: General Counsel

And a copy to:

Sanford H. Zetcoff, Esquire
Holt Ney Zetcoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339

For Notices to the Owner of the
North Retail Parcel:

CSD Kurtzein, LLC
c/o Clark Street Development
980 Michigan Avenue
Suite 1280
Chicago, Illinois 60611
Attention: Mr. Andrew Stein

For Notices to the Owner of the
Garage Parcel:

c/o Lennar Multifamily Communities, LLC
1300 E. Woodfield Rd. Suite 304
Schaumburg, Illinois 60173
Attention: Doug Bober

with a copy to:

Lennar Multifamily Communities, LLC
201 South Tryon, Suite 1000
Charlotte, North Carolina 28202
Attention: Mr. Todd M. Farrell

with a copy to:

Lennar Corporation
700 NW 107th Avenue
Suite 400
Miami, Florida 33172
Attention: General Counsel

And a copy to:

Sanford H. Zetcoff, Esquire
Holt Ney Zetcoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339

UNOFFICIAL COPY

For Notices to the Owner of the
South Retail Parcel:

CSD Kurtzein, LLC
c/o Clark Street Development
980 Michigan Avenue
Suite 1280
Chicago, Illinois 60611
Attention: Mr. Andrew Stein

For Notices to the Owner of the
South Apartment Parcel:

c/o Lennar Multifamily Communities, LLC
1300 E. Woodfield Rd. Suite 304
Schaumburg, Illinois 60173
Attention: Doug Bober

with a copy to:

Lennar Multifamily Communities, LLC
201 South Tryon, Suite 1000
Charlotte, North Carolina 28202
Attention: Mr. Todd M. Farrell

with a copy to:

Lennar Corporation
700 NW 107th Avenue
Suite 400
Miami, Florida 33172
Attention: General Counsel

And a copy to:

Sanford H. Zetcoff, Esquire
Holt Ney Zetcoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339

For Notices to the Owner of the
North Apartment Parcel:

c/o Lennar Multifamily Communities, LLC
1300 E. Woodfield Rd. Suite 304
Schaumburg, Illinois 60173
Attention: Doug Bober

with a copy to:

Lennar Multifamily Communities, LLC
201 South Tryon, Suite 1000
Charlotte, North Carolina 28202
Attention: Mr. Todd M. Farrell

with a copy to:

Lennar Corporation

UNOFFICIAL COPY

700 NW 107th Avenue
Suite 400
Miami, Florida 33172
Attention: General Counsel

And a copy to:

Sanford H. Zatzoff, Esquire
Holt Ney Zatzoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339

For Notices to the Owner of the
Future Retail Parcel:

CSD Kurtzein, LLC
c/o Clark Street Development
980 Michigan Avenue
Suite 1280
Chicago, Illinois 60611
Attention: Mr. Andrew Stein

Copies of all notices sent to any of the above addresses shall also be sent to the address shown on the real estate tax bill for that Parcel.

Notices (a) delivered personally shall be deemed delivered upon receipt by in person, and (b) delivered by a nationally known overnight carrier (such as Federal Express or UPS) for delivery on the next business day shall be deemed delivered upon receipt.

The foregoing notwithstanding, at such time as the North Apartment Parcel or South Apartment Parcel or any other part of the Project is submitted to the Act, Notices to the Parcel(s) submitted to the Act shall be delivered or mailed, as aforesaid, to the President of the condominium association with a copy sent to the managing agent of the condominium association, to such address as directed by said condominium association(s) or any registered agent thereof or as may appear in any public record instead of the addresses set forth above.

22.2 If any portion of the Project is subject to the Act, (i) in the event that any Owner may, but shall not be obligated to, give personal notice to a condominium unit owner, notice to the condominium association(s) shall be deemed sufficient and effective notice to all condominium unit owners, and (ii) the condominium association(s) alone shall be empowered to give notice on behalf of any or all unit owners under this Declaration, which notice shall be binding on such condominium unit owners.

22.3 Any Notice mailed as aforesaid shall be deemed received upon delivery, if personally delivered, or of the date delivered by a nationally known overnight carrier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least thirty (30) days prior to the effective date of such address change. Nothing herein contained, however, shall be

UNOFFICIAL COPY

construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made. Notices may be executed and sent by counsel to an Owner.

22.4 Upon the sale of all or any part of the Project, the selling Owner shall use reasonable efforts to give the other Owners written notice of said sale, which notice shall include the name and address of the new owner and that part of the Project sold.

ARTICLE 23 LIMITATION OF LIABILITY

23.1 Each Owner shall use reasonable diligence in performing the services required of such Owner, but shall not be liable for interruption or inadequacy of service, or for loss or damage to property or injury (including death) to any person as a result of interruption or inadequacy of service other than in the case of gross negligence or willful misconduct. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any services hereunder at any time in reasonable respects for a reasonable period to time to make necessary repairs or in the 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 Project: (i) 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 (ii) 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 until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall be so bound. Notwithstanding anything contained in this Section 23.2 to the contrary, no conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to Article 11 hereof, other than a divestiture resulting from a foreclosure of a mortgage lien that pursuant to Section 11.1 hereof, is superior to the lien arising pursuant to Article 11 hereof.

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

ARTICLE 24 GENERAL

24.1 In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Project and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate or interest in the Project. To that end, each Owner shall share

UNOFFICIAL COPY

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, subject to obtaining the consent of its Mortgagee (if required), furnish, execute and acknowledge, without charge (except where elsewhere provided herein) (i) such other instruments, documents, materials and information as the other Owners may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owners hereunder or increase such Owner's burdens hereunder; and (ii) such grants of easements to and agreements with utility and quasi-utility companies (such as, without limitation, providers of internet and fiber optic communication services) as the other Owners may reasonably request in order to enable such utility or quasi-utility company to furnish services as required by such Owner, provided that the proposed additional easement will not materially interfere with the use and occupancy of any portion of the Project, materially affect access to, or operation of, any portion of the Project, or materially increase the operating costs of, or create any additional expense for, the Owner granting such additional easement.

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.

24.4 Except as otherwise provided herein (including, without limitation, Article 20 hereof), if any proposed amendment to this Declaration affects both the North Building and the South Building, then this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees of both the North Building and the South Building; provided that if any proposed amendment to this Declaration affects only the North Building, then only the Owners and the Mortgagees of the North Building need to sign the amendment or termination agreement; provided further that if any proposed amendment to this Declaration affects only the South Building, then only the Owners and the Mortgagees of the South Building need to sign the amendment or termination agreement. If any portion of the Project is submitted to the Act, the condominium association may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all unit owners of the North Building and/or South Building affected, 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.

24.5 Except for the Easements provided for in Article 3 and Article 4 of this Declaration, which Easements shall be perpetual, 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 each, subject to amendment or termination as hereinabove set forth in Article 20 (Amendments To

UNOFFICIAL COPY

Declaration) or Section 24.4. 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 for Parcels in either the North Building and/or the South Building and the failure to restore or rebuild either or both Buildings within twenty four (24) months 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 (c) 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 Barack H. Obama, President of the United States, living at the date of this Declaration.

24.6 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 Project 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 Project or any part thereof or interest therein.

24.7 Except as expressly provided in Section 24.5 hereof, 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 an uninterrupted period in excess of twenty four (24) consecutive months.

24.8 The Declarant shall have the right to assign its rights hereunder to any third party having an interest in the Project; provided that no such assignment shall release Declarant from its obligations under this Declaration for periods occurring prior to the date of such assignment.

24.9 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 Unless specifically granted herein, this Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third-party beneficiary under any 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 or for any services provided hereunder unless otherwise provided or permitted under the terms of this Declaration.

UNOFFICIAL COPY

24.13 Except as provided for in the condominium declaration, if any, and this Section 24.13, an Owner shall not subdivide (nor file with the Recorder any further declaration creating additional legal descriptions) of any portion of the Project owned by it. Notwithstanding the foregoing, any Owner reserves the right to effect a subdivision (or file with the Recorder a further declaration creating additional legal descriptions) of that part of the Project owned by it into two or more separate parcels of property and space and cause such parcels to be separately conveyed and owned subject to this Declaration, provided that the owners of the newly created portions of the applicable portion of the Project shall be jointly and severally liable for the payment and performance of the obligations of the subdividing Owner under this Declaration.

24.14 No provision of this Declaration shall be deemed to have been waived by any party hereto unless such waiver shall be in a writing signed by the party making such waiver. The failure of any party subject hereto to seek redress for a violation of, or to insist upon the strict performance of, any covenant or condition of this Declaration, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

24.15 Each holder of a Mortgage is given the right, but not the obligation, to act on behalf of the Owner whose interest in the Project is mortgaged to it, to cure defaults of such Owner within any applicable cure period set forth herein, and each Owner agrees to accept performance by such holder of the Mortgage.

24.16 Upon the request of any Owner, the other Owner(s) shall provide the requesting Owner with as-built drawings of the Improvements and/or Alterations located on that Owner's Parcel, which drawing shall include copies of final construction plans and specifications and shall include both hard copies and electronic copies in the format then used by the architect who prepared the plans.

24.17 Signage. The Owners agree that pursuant to the RDA (as amended from time to time) any and all signage erected on the exterior elevations of the Project must be erected in the locations shown on Exhibit I attached hereto. The legend on said Exhibit identifies sign locations S1 through S18 and whether that sign location is for "Residential Signage", "Retail Signage", "Parking Signage", "Parking Signage with Approved Retail", "Suspended Sign" or "Residential Signage with Approved Retail". The Owners covenant and agree that the areas on said Exhibit I that identify (i) the "Residential Signage" (except for sign S17) means that signage location is reserved for the exclusive use of the Owner of the North Apartment Parcel and/or the Owner of the South Apartment Parcel, as the case maybe, and that no other Owner shall have the right to review and/or approve of the signage erected by those Owners in those locations so long as same is erected in compliance with all laws, (ii) the "Retail Signage" means that signage location is reserved for the exclusive use of the Owner of the North Retail Parcel, the Owner of the South Retail Parcel and/or the Owner of the Future Retail Parcel, as the case maybe, and that no other Owner shall have the right to review and/or approve of the signage erected by those Owners in those locations so long as same is erected in compliance with all laws, (iii) the "Parking Signage" and "Suspended Sign" means that signage location is reserved for the exclusive use of the Owner of the Garage Parcel and no other Owner shall have the right to review and/or approve of the signage erected by that Owner in those locations so

UNOFFICIAL COPY

long as same is erected in compliance with all laws, (iv) the "Parking Signage with Approved Retail" means that signage location is reserved for the use of the Owner of the Garage Parcel provided that the Owner of the North Retail Parcel, the Owner of the South Retail Parcel and/or the Owner of the Future Retail Parcel, as the case maybe, shall have the right to have an Occupant of its Parcel located on said signage and said signage shall be subject to the mutual agreement of those Owners and shall otherwise be erected in compliance with all laws, (v) the "Residential Signage with Approved Retail" means that signage location is reserved for the use of the Owner of the North Apartment Parcel provided that the Owner of the North Retail Parcel shall have the right to place the name/logo of one of its Occupants on said signage and said signage shall be subject to the mutual agreement of those Owners and shall otherwise be erected in compliance with all laws; provided that if the Occupant of the North Retail Parcel no longer wants to be depicted on that sign, or if said Occupant wants to change the name/logo on said sign, it may do so, at its sole cost and any change to the name/logo on said sign will be subject to the reasonable approval, timely given, of the Owner of the North Apartment Parcel. Notwithstanding anything to the contrary contained in this Section 24.17, sign location S18 identified as "Residential Signage" on Exhibit I means that one signage location is reserved for the use of the Owner of the North Apartment Parcel provided that sign is used solely and exclusively to identify the location of the Owner of the North Apartment Parcel's leasing office in the Project and/or the leasing availability of residential apartments in the Project and for no other purpose, provided further that said signage shall otherwise be erected in compliance with all laws.

Further, and notwithstanding anything to the contrary contained in this Section 24.17, sign location S17 identified as "Residential Signage" on Exhibit I means that one (1) sign, which is a multi-tenant sign, is reserved (as provided below) for the use of the Owner of the North Retail Parcel, the Owner of the South Retail Parcel Owner, the Owner of the North Apartment Parcel and the Owner of the Future Retail Parcel provided that the Owner of the North Apartment Parcel shall take the lead with regard to this sign S17 by fabricating, installing and maintaining same, provided that each other Owner shall be responsible for the cost to fabricate, install and maintain its panel (as provided below) on said sign. This S17 multi-tenant sign will have five (5) panels; the top panel is reserved for the exclusive use of the Owner of the North Apartment Parcel, the panel below is reserved for the exclusive use of the Owner of the North Retail Parcel, the next below panel is reserved for the exclusive use of the Owner of the Future Retail Parcel, the next below panel is reserved for the exclusive use of the Owner of the North Retail Parcel and the next below panel is reserved for the exclusive use of the Owner of the South Retail Parcel. So long as said sign, and the panels thereon, are erected in compliance with all laws, no Owner shall have approval rights on the sign panels erected by another Owner.

The Owners mutually approve the erection (and replacement) of the way finder/directory/parking/text/Target bullseye signage in, on and around the Garage Parcel Improvements in the locations shown on Exhibit J attached hereto and made a part hereof; provided that nothing shall prohibit the Owner or Occupant of the North Retail Parcel from changing the name/logo on said signage, from time to time, so long as said Owner or Occupant does so at its sole cost and expense and the changed name/logo is consistent with that Occupant's other locations. The

UNOFFICIAL COPY

Owner or Occupant of the North Retail Parcel shall, at its sole cost and expense, maintain the name/logo on said signage (including elements such as painting and graphics).

The Owners shall equitably share the cost to erect the signage shown on Exhibit J so that (x) to the extent the signage is for tenant or Occupant of a Retail Parcel, the Owner of that Retail Parcel shall pay the cost to create, install, maintain and replace said signage, (y) to the extent the signage is for the Occupants of the North Apartment Parcel Improvements and/or the South Apartment Parcel Improvements, the Owner of those Improvements shall pay the cost to create, install, maintain and replace said signage, and (z) to the extent the Owner of the Garage Parcel installs signage in or on the Garage Improvements that is not for the purposes described in (x) or (y) above, the Owner of the Garage Parcel shall pay to create, install, maintain and replace said signage.

The Owner of the Apartment Parcels covenants not to erect any signage on the roof or exterior of the North Building or the South Building if said signage would advertise a competitor of any tenant leasing space in a Retail Parcel.

ARTICLE 25 PROHIBITED USES

25.1 Prohibited Retail Uses. No portion of either North Retail Parcel or the South Retail Parcel (the North Retail Parcel and the South Retail Parcel are herein referred to as the "**Retail Parcels**") shall be used for any of the following purposes:

(a) Any use that emits an obnoxious odor, noise or sound that can be heard or smelled outside of the Retail Parcels, provided that normal and customary restaurant odors and music played at normal levels in an outdoor seating areas are permitted;

(i) Any assembling, manufacturing, distilling, refining or refinishing operation; provided that nothing shall prevent the operation of a beer brewing operation as part of the operation of a restaurant or bar;

(ii) Any "surplus" or "second-hand" store or any flea market; provided, however, that this shall not prevent the operation of: (i) "upscale second-hand" resale, and consignment stores and (ii) antique stores;

(iii) Any pawn shop;

(iv) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors provided for the use of Retail Parcel tenants;

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

UNOFFICIAL COPY

(vi) Any central laundry, dry cleaning plant or laundromat, provided, however, this prohibition shall not be applicable to facilities accepting drop off/pick up dry cleaning and laundry for dry cleaning and laundry services conducted at another location;

(vii) Any automobile, truck, trailer or recreational vehicle body shop or repair operation;

(viii) Any bowling alley or skating rink;

(ix) Any movie theater;

(x) Any veterinary hospital or animal raising or boarding facility; provided that a pet shop providing veterinary services similar to a PetSmart or Petco shall be permitted;

(xi) Any mortuary or funeral home;

(xii) Any establishment selling or exhibiting pornographic or obscene materials, except that this provision shall not prohibit (i) first-class national videotape retailers that rent primarily non-"X-rated" videotapes (that is, "G" to "R"-rated videotapes) but which also rent "X-rated or non-rated videotapes" for off-premises viewing only, provided such "X-rated" or "non-rated" videotapes, and the place and procedure for selection thereof (which shall not exceed in the aggregate fifty (50) square feet of floor area), precludes viewing or selection by minors and without any promotional, advertising or other depiction or description in respect of any "X-rated" or "non-rated" videotapes displayed or utilized within or outside the store, or (ii) first-class national book stores that are not perceived to be, nor hold themselves out as, "adult book" stores, and general merchandise stores, such as drug stores that sell primarily general audience books, but which incidentally sell books, magazines and other periodicals that may contain pornographic materials so long as such sale is not from any special or segregated section in the store;

(xiii) Any establishment selling or exhibiting drug-related paraphernalia; provided that if permitted by law, the operation of a medical marijuana dispensary is permitted, so long as any such medical marijuana dispensary is responsible for any increased security, insurance or other costs arising out of or in connection with its occupancy;

(xiv) Restaurants, bars, taverns or other establishments with nude dancers, entertainers or wait staff;

(xv) Any massage parlors or similar establishments except that this prohibition shall not prohibit (i) a high-end massage spa such as Massage Envy or (ii) a day spa that offers massages;

(xvi) Any amusement or video arcade, pool or billiard hall (for purposes of clarity, a restaurant, bar, tavern or other permitted establishment which may contain a small number of pool tables for incidental use by its regular customers shall not be considered a pool or billiard hall for purposes of this subsection (xvi));

UNOFFICIAL COPY

(xvii) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker, slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall;

(xviii) Any church, synagogue, mosque or other place of worship; or

25.2 Other Restrictions Applicable to the North Retail Parcel and the South Retail Parcel.

(a) No portions of the Retail Parcels may be operated as a bar, tavern or restaurant selling alcoholic beverages later than 2:00 am on any night;

(b) Obnoxious or unreasonably loud and/or disruptive noises, sounds or vibrations that can be heard or felt outside of a Retail Parcel shall not be permitted.

(c) Those portions of the North Retail Parcel or the South Retail Parcel which include restaurants, coffee shops, and other shops which prepare food and beverages for consumption on the premises shall take measures to minimize the discharge of smells and odors into the surrounding areas. The cooking of foods shall be performed in the kitchens that are adequately vented to minimize the smells and odors emanating from the North Retail Parcel or the South Retail Parcel.

(i) All rubbish, trash, and garbage shall be regularly removed from the Project and shall not be allowed to accumulate. The Owners of the North Retail Parcel shall use their commercially reasonable efforts to cause the vendors picking up and removing trash to do so between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and 8:00 a.m. and 8:00 p.m. on weekends;

(ii) The Owners of the North Retail Parcel shall use their commercially reasonable efforts to cause the vendors making deliveries to do so between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and 8:00 a.m. and 8:00 p.m. on weekends; provided that these hours will not apply to delivery vehicles not utilizing the designated delivery zones;

(iii) Establishments which serve alcoholic beverages shall keep and maintain dram shop and liquor liability insurance policies with commercially reasonable and customary liability limits; and

(iv) So long as the tenant commonly known as Target, its successors and assigns, is a tenant in the North Retail Parcel, no portion of the Retail Parcels may be operated as (a) a drug store or any store, department or operation (excluding a doctor's office) of any size selling any pharmaceutical drugs requiring the services of a licensed pharmacist; (b) any grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food and/or beverages (provided that all types of restaurants, donut shops, bakery shops and coffee shops are not prohibited and provided further that the incidental sale of food or beverages is permitted); (c) any lockers, lock-boxes or other type of storage system that is used to receive or store merchandise from a catalog or online retailer; (d) any store, or department within a store, operated as a fulfillment center in connection with receiving, storing or distributing merchandise from a catalog or online

UNOFFICIAL COPY

retailer; or (e) any beauty specialty store or beauty-retail concept store such as those operated as of the date of this Declaration under the trade name ULTA or Sephora (provided the incidental sale of beauty products is permitted).

25.3 Use Restrictions Applicable to the North Apartment Parcel and the South Apartment Parcel.

(a) Balconies and terraces may contain only outdoor furniture and fixtures. Towels and clothing shall not be permitted to hang over any exterior balcony walls or railings.

(b) Cigarette and cigar butts may not be thrown from balconies or from decks or terraces.

(c) No portion of the North Apartment Parcel or the South Apartment Parcel may be operated as a boarding house or hostel or for short term occupancy of less than three (3) months, except that leases of furnished "corporate" units shall be permitted to the extent permitted under applicable Village ordinances.

(d) No portion of the North Apartment Parcel or the South Apartment Parcel may be operated for any retail use.

25.4 Covenants and Conditions Applicable to the Project.

(a) Compliance with Laws. Each Owner, with regard to the Parcel owned by it, shall each be responsible for complying 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, Illinois, County of Cook, the Village and any other governmental entity or agency now or hereafter having jurisdiction over the Project or any portion thereof, if noncompliance by it with would (i) subject the other Owners to civil or criminal liability or (ii) jeopardize such other Owners' right to occupy or utilize beneficially their respective Parcels or any part thereof or which would result in the imposition of a lien against the Unit of the other Owners.

(b) Environmental.

(i) No Owner or Occupant shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substance (hereinafter defined) of any kind from, on, in, under or in the air above any part of the Project including, but not limited to, any surface waters or groundwater located thereon or into public sanitary sewer systems serving the Project without complying with all Environmental Laws (hereinafter defined); including, but not limited to performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. "**Hazardous Substances**" shall mean those substances now or hereafter included within (whether as a result of such substance's inclusion on a list, physical characteristics or otherwise) any of the definitions of "hazardous substances", "hazardous waste", "hazardous materials", "pollutant", "contaminant" or "toxic substance" under or

UNOFFICIAL COPY

00076172.DOCX / v. 18

(c) Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Project that are exposed to elevated levels of moisture including, but not limited to, those portions of the Building in which HVAC condenser units are located. Therefore, all Owners shall: (i) regularly inspect those portions of their Parcels which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers and other similar appliances and improvements) and/or damages; (ii) upon discovery, immediately repair in a good and workman-like condition the source of any water intrusion in their Parcels; (iii) remediate or replace any materials in their Parcels that they have absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in their Parcels in accordance with current industry-accepted methods. Each Owner shall notify the other Owners of the discovery of mold, mildew and/or water intrusion and/or damage in their Parcel. Owners shall not block or cover any of the heating,

(iii) No Owner or Occupant of any portion of the Project, shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any explosives, or any flammable, odorous, noxious, corrosive, or pollutant materials or any other goods that would cause danger or nuisance to any portion of the Building or the Project. Furthermore, storage areas located within a Building shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code.

(ii) Each Owner and Occupant shall be responsible for and shall pay all costs and expenses related to the disposal or release by such Owner or Occupant, of any Hazardous Substances, sewage or wastes of any kind in, on, under or in the air above such Unit, which costs and expenses shall include, but not be limited to, closure, removal, remediation, cleanup, containment and other response costs, injuries to persons, damages to property, legal expenses and interest paid to any governmental entity.

Parcels (including, but not limited to, hazardous substances in consumer products).
 Part 280, Notwithstanding the above, this prohibition shall not apply to the presence, use, or storage on a Parcel of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal parking, residential, retail and restaurant uses and to maintenance of the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq. and such regulations as may be promulgated with respect thereto, including, but not limited to the regulations contained in 40 CFR Part 280, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., the regulation or the use, processing, storage disposal, generation or transportation of Hazardous Substances or any contamination, cleanup or disclosure related thereto, including, but not limited to, federal, state or local laws, rules orders ordinances and regulations pertaining to environmental natural gas and synthetic gas. "Environmental Laws" shall mean and include all present and future (E) petroleum (including crude oil or any fraction thereof), natural gas liquids, liquefied or Hazardous Substances, (B) asbestos, (C) polychlorinated biphenyls, (D) radioactive materials and containing listed Hazardous Substances and waste generated from the treatment, storage or disposal otherwise regulated by any Environmental Laws; including, but not limited to (A) mixtures

UNOFFICIAL COPY

00076172.DOCX / v. 18

[Executions begin on next page]

The Owner of the Garage Parcel shall include the concepts in this Article 26 in any third party garage operating agreement it enters into with regard to all or any part of the Garage Parcel Improvements.

The Owner of the Garage Parcel shall use its commercially reasonable efforts to insure that the Garage Parcel Improvements are operated in a manner consistent with the terms of the Easement Agreement attached as exhibit 12 to the RDA.

Notwithstanding anything to the contrary contained in this Declaration but subject to the terms of Section 4.5(c) above, commencing on the date the Garage Parcel Improvements are open for use and continuing during the term of this Declaration (the "Parking Term") the Owners (and their respective principals and employees conducting business on the applicable premises) and the customers of the retail tenants operating in the North Retail Parcel and/or the South Retail Parcel and/or the Future Retail Parcel as the case may be (collectively the "Garage Visitors"), shall have the right to park in the Garage Parcel Improvements for up to sixty (60) minutes at no cost with an in-store purchase parking validation stamp. Declarant shall install, maintain and operate a validation system (the "Parking System") within the Garage Parcel Improvements so that parking is available for the Garage Visitors via said Paid Parking System and Declarant will incorporate in the Parking System technology which will permit Occupants of the Retail Parcels to issue electronic validations from said Occupants point of sale system; provided that nothing shall prevent Declarant from using a Parking System that permits said Occupants to issue non-electronic validations so long as said non-electronic validation Parking System is in use at other locations in the Village of Oak Park or, during the preceding five (5) years, in the City of Chicago. The Owner of the North Retail Parcel and/or the Owner of the South Retail Parcel and/or the Future Retail Parcel and the Owner or operator of the Garage Parcel may document this use of the Garage Parcel Improvements arrangement by letter agreement and/or license agreement, but the failure to do so will not affect the parties' rights under this Article 26. After the expiration of the first sixty (60) minutes of no cost in-store purchase parking validation parking, the Garage Visitors will pay the market parking rates then being charged by the Owner of the Garage Parcel.

ARTICLE 26 TERMS FOR RETAIL PARKING IN GARAGE PARCEL IMPROVEMENTS

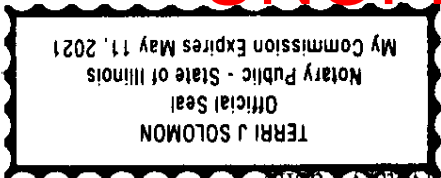
(d) The right of any Owner to seek relief from or in connection of the assessment and levy of taxes upon its Parcel shall be subject to and limited by matters set forth in the RDA and the ordinances establishing the TIF District which includes the Parcels.

ventilation or air-conditioning ducts located in their Parcels and Owners of Retail Parcels and shall maintain a temperature above 40 degrees in their Parcels.

UNOFFICIAL COPY

00076172.DOCX / v. 18

80



GIVEN under my hand and Notarial Seal this 28th day of April, 2017.

I, the undersigned, a Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that Douglas G. Bober, Jr., the vice president Lennar Multifamily BTC Venture GP, LLC, the sole member of Lennar Multifamily BTC Venture GP Subsidiary, LLC, the manager of LMV Oak Park REIT, LLC, the sole member of LMC Oak Park Holdings, LLC is personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such manager, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

STATE OF Illinois
)
)
)
COUNTY OF Cook
SS.

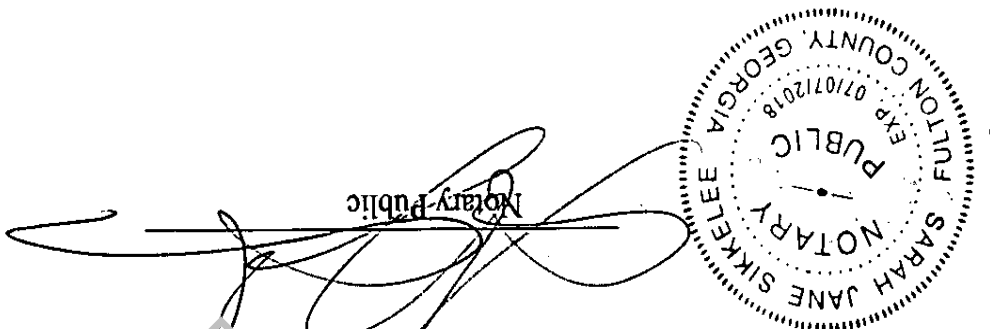
By:
Douglas G. Bober, Jr.
Vice President

LMC OAK PARK HOLDINGS, LLC, a Delaware limited liability company
By: LMV Oak Park REIT, LLC, a Delaware limited liability company, its sole member
By: Lennar Multifamily BTC Venture GP Subsidiary, LLC, a Delaware limited liability company, its Manager
By: Lennar Multifamily BTC Venture GP, LLC, a Delaware limited liability company, its sole member

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the 1st day of May, 2017.

UNOFFICIAL COPY

00076172.DOCX / v. 18



GIVEN under my hand and Notarial Seal this 1st day of May 2017.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Kevin Matthews the vice president of JP Morgan Chase Bank, N.A. personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of JP Morgan Chase Bank, N.A.

STATE OF ILLINOIS)
 COUNTY OF COOK)
) SS.
)

By: _____
 Name: Kevin Matthews
 Title: Vice President

JP Morgan Chase Bank, N.A.

In witness whereof, the Lender has caused this Consent of Mortgagee to be signed by its duly authorized officer on its behalf in _____ (1st) on this 1st day of May 2017.

JP Morgan Chase Bank, N.A. ("Lender"), the holder of a Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of March 7, 2016 (the "Mortgage") and recorded in the Office of the Cook County Recorder of Deeds on March 9, 2016 as document number 1606929053 hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements and agrees that said Mortgage is subject thereto.

CONSENT OF MORTGAGEE

UNOFFICIAL COPY

EXHIBIT A

Legal Description of the Land

PARCEL 1:

The East Half of Lot 5 and all of Lots 6 and 7 (except the South 18-1/2 feet of said Lots 5, 6 and 7) in Block 1 in Whaple's Subdivision; also Lots 9 and 10 (except the South 18-1/2 feet thereof) in Hoard and Others' Subdivision of Lot 1 (except the North 100.00 feet thereof) in Niles Subdivision of Lots 10 to 16, both inclusive, and the West 13 feet of Lot 17 in Skinner's Subdivision, all of above being in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Lots 1 and 2 in 1121-23 Lake Street Building Partnership Subdivision, a subdivision in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, Village of Oak Park, Cook County, Illinois.

PARCEL 3:

INTENTIONALLY DELETED.

PARCEL 4:

The West 10 feet of Lot 11 (except the North 18 1/2 feet conveyed for street) in Hoard and Others' Subdivision of Lot 1 (except the North 100 feet) in Niles Subdivision of Lots 10 to 16 inclusive, and the West 13 feet of Lot 17 in Skinner's Subdivision of the Southwest corner of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Lot 8 (except the South 92 feet and except the North 18 1/2 feet conveyed for street) in Block 1 in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

That part of Lot 9 in Block 1 in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian lying North of a line described as follows:

Commencing at a point on the West line of Lot 9, 98.92 feet North of the North line of North Boulevard as occupied, thence East on a line parallel with the North line of North Boulevard 50.00 feet to the East line of Lot 9 (except the North 18 1/2 feet conveyed for street) in Whaple's Subdivision of land in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 5:

Lots 22, 23, 24 and the East 15 feet of Lot 25 in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision of Land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

The West 10 feet of Lot 25, all of Lot 26 and Lot 27 (except the West 6 inches thereof) in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision of Land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

The South 92 feet of Lot 8 in Block 1 in Whaple's Subdivision of land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, and the West 6 inches of Lot 27 in Hoard & Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10 to 16, inclusive and the West 13 feet of Lot 17 in Skinner's Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

UNOFFICIAL COPY

That part of Lot 9 in Block 1 in Whaple's Subdivision of land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, lying South of a line described as follows: Commencing at a point on the West line of Lot 9, 98.92 feet North of the North line of North Boulevard as occupied; thence East on a line parallel with the North line of North Boulevard 50.0 feet to the East line of Lot 9, all in Cook County, Illinois.

A strip of land 20 feet, more or less, lying immediately South of and adjoining the South line of Lots 8 and 9 in Block 1 in Whaple's Subdivision of Land in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13, East of the Third Principal Meridian, and North of North line of North Boulevard in Village of Oak Park as actually laid out and established, all in Cook County, Illinois.

PARCEL 5:

The East 15 feet of Lot 11 (except the North 18.5 feet thereof) and all of Lots 12 and 13 (except the North 18.5 feet of each of said Lots) in Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles' Subdivision of Lots 10, 11, 12, 13, 14, 15, 16 and the West 13 feet of Lot 17 in Skinner's Subdivision in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 7:

Those portions of the alleys vacated pursuant to Ordinance No. 15-224 of the Village of Oak Park recorded March 9, 2016 as Document No. 1606916005 and as described and depicted on the Plat of Vacation recorded March 9, 2016 as Document No. 1606916006, in Cook County, Illinois, described as follows:

VACATION AREA NO. 1

That part of a 15 foot wide public alley lying North of Lots 5 to 10 inclusive, in and established by Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles Subdivision of Lots 10 to 16 inclusive and the West 13 feet of Lot 17 of Skinner's Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, and lying West of the Southerly extension of the East line of Lot 1 in 1121-23 Lake Street Building Partnership Subdivision, being a subdivision of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, according to the plat thereof recorded May 6, 1994 as Document No. 94413163, all in Cook County, Illinois.

VACATION AREA NO. 2

That part of a 15 foot wide public alley lying South of Lots 11 to 16 inclusive, North of Lots 22 to 27 inclusive and West of the Southerly extension of the East line of Lot 13, all in and established by Hoard and Others' Subdivision of Lot 1 (except the North 100 feet thereof) in Niles Subdivision of Lots 10 to 16 inclusive and the West 13 feet of Lot 17 of Skinner's Subdivision of land in the Southwest corner of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 8:

An exclusive easement in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 1606929049 for and in the air rights over that portion of Westgate Street within the Village of Oak Park for the purposes of constructing, using, widening, operating, maintaining, renovating, repairing and replacing the Bridge over Westgate Street connecting the North Building and the South Building for pedestrian access, ingress and egress over Westgate Street, more particularly described as follows:

UNOFFICIAL COPY

That part of Westgate Street as widened and adjoining Block 1 in Whaple's Subdivision lying above an elevation of 646.10 feet and below an elevation of 662.10 feet (VD 88), in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Commencing at the intersection of the South line of Westgate Street as widened and the East line of Lot 13 in Hoard & Others' Subdivision; thence South 88 degrees 30 minutes 15 seconds West along said South line, 75.00 feet to the East line of Lot 8 in said Block 1 in Whaple's Subdivision; thence South 88 degrees 30 minutes 15 seconds West along said South line, 18.37 feet to the Point of Beginning; thence South 88 degrees 30 minutes 15 seconds West along said South line, 11.00 feet, thence North 01 degree 29 minutes 45 seconds West, 70.00 feet to the North line of Westgate Street also being the North line of the South 18-1/2 feet of Lot 7 in said Block 1 in Whaple's Subdivision; thence North 88 degrees 30 minutes 15 seconds East along said North line, 11.00 feet; thence South 01 degree 29 minutes 45 seconds East, 70.00 feet to the Point of Beginning.

PARCEL 9:

Nonexclusive easements in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 1606929050 for the purposes of (1) constructing, using, maintaining, repairing and replacing columns with caissons directly below, on, over, under, across and through the "Columns Easement Area" more particularly described below as Tract 1; and (2) installing, constructing, using, maintaining, repairing and replacing an underground concrete encased cable on, over, under, across and through the "Cable Easement Area" more particularly described below as Tract 2:

TRACT 1 - COLUMNS EASEMENT AREA:

That part of a public alley established by Hoard & Others' Subdivision, being a subdivision in the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Beginning at the intersection of the North line of North Boulevard and the East line of Lot 22 in Hoard & Others' Subdivision; thence North 01 degree 57 minutes 17 seconds West along said East line, 105.00 feet to the Northeast corner of said Lot 22 being on the South line of an intersecting alley; thence South 88 degrees 27 minutes 26 seconds West along said South line, 87.24 feet to the Southerly extension of the East line of Lot 13 in said Hoard & Others' Subdivision; thence North 01 degree 50 minutes 00 seconds West along said extension, 3.00 feet; thence North 88 degrees 27 minutes 26 seconds East parallel with said South line, 50.23 feet; thence South 01 degree 57 minutes 17 seconds East, 108.00 feet to the Easterly extension of the North line of North Boulevard from aforesaid Lot 22; thence South 88 degrees 27 minutes 26 seconds West along said North line, 3.00 feet to the Point of Beginning.

TRACT 2 - CABLE EASEMENT AREA:

That part of Westgate Street as widened in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Commencing at the intersection of the South line of Westgate Street as widened and the East line of Lot 13 in Hoard & Others' Subdivision, thence South 88 degrees 30 minutes 15 seconds West along said South line, 23.60 feet to the Point of Beginning; thence South 88 degrees 30 minutes 15 seconds West along said South line, 5.10 feet, thence North 12 degree 51 minutes 16 seconds West, 71.40 feet to the North line of Westgate Street also being the North line of the South 18-1/2 feet of Lot 9 in said Hoard and Others' Subdivision; thence North 88 degrees 30 minutes 15 seconds East along said North line, 5.10 feet; thence South 12 degrees 51 minutes 16 seconds East, 71.40 feet to the Point of Beginning.

UNOFFICIAL COPY

PARCEL 10:

A temporary construction easement in favor of LMC Oak Park Holdings, LLC, a Delaware limited liability company, and its successors, assigns and successors-in-title to the Project Property, dated March 7, 2016, and recorded March 9, 2016, as Document 1606929051 for the staging of construction materials and the location and operation of construction cranes and construction trailers on, over, under, across and through that portion Westgate Street within the Village of Oak Park, more particularly described as follows:

That part of Westgate Street lying East of the Southerly extension of the Westerly line of Maple Avenue and lying West of the West line of Marion Street, in the Southwest Quarter of the Northwest Quarter of Section 7, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: ~~Elevate Oak Park located at the southeast quadrant of New Station Street and Lake Street, Oak Park, Illinois~~

PINs

- 16-07-124-036-0000
- 16-07-124-037-0000
- 16-07-124-039-0000
- 16-07-124-040-0000
- 16-07-125-006-0000
- 16-07-125-026-0000
- 16-07-125-030-0000
- 16-07-125-023-0000
- 16-07-125-025-0000
- 16-07-125-029-0000
- 16-07-125-007-0000

*1129 Lake Street, 104 N. Maple Avenue
and 106 N. Maple Avenue
Village of Oak Park, IL 60301*

UNOFFICIAL COPY

EXHIBIT B

Legal Description of the North Apartment Parcel

TRACT 1, BEING A SINGLE TRACT OF LAND COMPOSED OF THE FOLLOWING 3 PARCELS:

PARCEL 1: THE EAST HALF OF LOT 5 AND ALL OF LOTS 6 AND 7 (EXCEPT THE SOUTH 18-1/2 FEET OF SAID LOTS 5, 6 AND 7) IN BLOCK 1 IN WHAPLE'S SUBDIVISION; ALSO LOTS 9 AND 10 (EXCEPT THE SOUTH 18-1/2 FEET THEREOF) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100.00 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16, BOTH INCLUSIVE, AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION, ALL OF ABOVE BEING IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 1 AND 2 IN 1121-23 LAKE STREET BUILDING PARTNERSHIP SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF A 15 FOOT WIDE PUBLIC ALLEY LYING NORTH OF LOTS 5 TO 10 INCLUSIVE, IN AND ESTABLISHED BY HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE AND THE WEST 13 FEET OF LOT 17 OF SKINNERS SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 1 IN 1121-23 LAKE STREET BUILDING PARTNERSHIP SUBDIVISION, BEING A SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 6, 1994 AS DOCUMENT NO. 94413163, ALL IN COOK COUNTY, ILLINOIS.

EXCEPT THEREFROM SAID TRACT 1 THAT PORTION LYING ABOVE AN ELEVATION OF 632.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 648.10 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 1; THENCE NORTH 88 DEGREES 31 MINUTES 02 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT, 34.00 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 0.89 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 29.50 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 11.21 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.13 FEET;

UNOFFICIAL COPY

THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 4.02 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 14.91 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 0.96 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.58 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 6.24 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 78.81 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 7.20 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 21.45 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 4.02 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.12 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 11.21 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 29.50 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 137.44 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 109.41 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 14.12 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 15.93 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 29.10 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 8.60 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 31.21 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 8.01 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 19.50 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 48.05 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 71.74 FEET TO THE POINT OF BEGINNING.

UNOFFICIAL COPY

EXHIBIT C

Legal Description of the North Retail Parcel

THAT PART OF TRACT 1, BEING A SINGLE TRACT OF PROPERTY COMPOSED OF THE FOLLOWING 3 PARCELS:

PARCEL 1: THE EAST HALF OF LOT 5 AND ALL OF LOTS 6 AND 7 (EXCEPT THE SOUTH 18-1/2 FEET OF SAID LOTS 5, 6 AND 7) IN BLOCK 1 IN WHAPLE'S SUBDIVISION; ALSO LOTS 9 AND 10 (EXCEPT THE SOUTH 18-1/2 FEET THEREOF) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100.00 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16, BOTH INCLUSIVE, AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION, ALL OF ABOVE BEING IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 1 AND 2 IN 1121-23 LAKE STREET BUILDING PARTNERSHIP SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, VILLAGE OF OAK PARK, COOK COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF A 15 FOOT WIDE PUBLIC ALLEY LYING NORTH OF LOTS 5 TO 10 INCLUSIVE, IN AND ESTABLISHED BY HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE AND THE WEST 13 FEET OF LOT 17 OF SKINNERS' SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 1 IN 1121-23 LAKE STREET BUILDING PARTNERSHIP SUBDIVISION; BEING A SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 6, 1994 AS DOCUMENT NO. 94413163, ALL IN COOK COUNTY, ILLINOIS.,

LYING ABOVE AN ELEVATION OF 632.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 648.10 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 1; THENCE NORTH 88 DEGREES 31 MINUTES 02 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT, 34.00 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 0.89 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 29.50 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 11.21 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.13 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 4.02 FEET; THENCE

UNOFFICIAL COPY

NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 14.91 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 0.96 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.58 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 6.24 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 78.81 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 7.20 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 21.45 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 4.02 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 5.12 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 11.21 FEET; THENCE NORTH 01 DEGREES 51 MINUTES 05 SECONDS WEST, 29.50 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 137.44 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 109.41 FEET; THENCE NORTH 88 DEGREES 08 MINUTES 55 SECONDS EAST, 14.12 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 15.93 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 29.10 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 8.60 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 31.21 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 1.01 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 19.50 FEET; THENCE SOUTH 01 DEGREES 51 MINUTES 05 SECONDS EAST, 48.05 FEET; THENCE SOUTH 88 DEGREES 08 MINUTES 55 SECONDS WEST, 71.74 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

UNOFFICIAL COPY

EXHIBIT D

Legal Description of the Garage Parcel

THAT PART OF TRACT 2, BEING A SINGLE TRACT OF PROPERTY COMPOSED OF THE FOLLOWING 4 PARCELS:

PARCEL 1: THE WEST 10 FEET OF LOT 11 (EXCEPT THE NORTH 18-1/2 FEET CONVEYED FOR STREET) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET) IN NILES' SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE, AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOT 8 (EXCEPT THE SOUTH 92 FEET AND EXCEPT THE NORTH 18-1/2 FEET CONVEYED FOR STREET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN 1 YING NORTH OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF LOT 9, 98.92 FEET NORTH OF THE NORTH LINE OF NORTH BOULEVARD AS OCCUPIED, THENCE EAST ON A LINE PARALLEL WITH THE NORTH LINE OF NORTH BOULEVARD 50.0 FEET TO THE EAST LINE OF LOT 9 (EXCEPT THE NORTH 18 1/2 FEET CONVEYED FOR STREET) IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 22, 23, 24 AND THE EAST 15 FEET OF LOT 25 IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THE WEST 10 FEET OF LOT 25, ALL OF LOT 26 AND LOT 27 (EXCEPT THE WEST 6 INCHES THEREOF) IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE

UNOFFICIAL COPY

13; EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THE SOUTH 92 FEET OF LOT 8 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE WEST 6 INCHES OF LOT 27 IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF LOT 9, 98.92 FEET NORTH OF THE NORTH LINE OF NORTH BOULEVARD AS OCCUPIED; THENCE EAST ON A LINE PARALLEL WITH THE NORTH LINE OF NORTH BOULEVARD 50.0 FEET TO THE EAST LINE OF LOT 9, ALL IN COOK COUNTY, ILLINOIS.

A STRIP OF LAND 20 FEET, MORE OR LESS, LYING IMMEDIATELY SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 8 AND 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND NORTH OF NORTH LINE OF NORTH BOULEVARD IN VILLAGE OF OAK PARK AS ACTUALLY LAID OUT AND ESTABLISHED, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE EAST 15 FEET OF LOT 11 (EXCEPT THE NORTH 18.5 FEET THEREOF) AND ALL OF LOTS 12 AND 13 (EXCEPT THE NORTH 18.5 FEET OF EACH OF SAID LOTS) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10, 11, 12, 13, 14, 15, 16 AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: THAT PART OF A 15 FOOT WIDE PUBLIC ALLEY LYING SOUTH OF LOTS 11 TO 16 INCLUSIVE, NORTH OF LOTS 22 TO 27 INCLUSIVE AND WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 13, ALL IN AND ESTABLISHED BY HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE AND THE WEST 13 FEET OF LOT 17 OF SKINNERS SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.,

LYING ABOVE AN ELEVATION OF 631.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 646.33 FEET, NORTH AMERICAN

UNOFFICIAL COPY

VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF AFORESAID TRACT 2; THENCE NORTH 88 DEGREES 27 MINUTES 26 SECONDS EAST ALONG THE SOUTH LINE OF SAID PROPERTY, 44.58 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 18.49 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 139.89 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 8.58 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 8.00 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 26.12 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 3.08 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 14.94 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 8.46 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST A DISTANCE OF 0.28 FEET THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 28.93 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 6.67 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 0.68 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 16.63 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 17.22 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 3.85 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 5.52 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 19.93 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 0.44 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 19.55 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 0.67 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 14.23 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 22.53 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 6.40 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 2.05 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 6.58 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 53.94 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 30.71 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 12.16 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 13.82 FEET TO THE EAST LINE OF AFORESAID TRACT 2; THENCE SOUTH 01 DEGREES 50 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, 88.87 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 2.39 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 5.60 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 17.50 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 11.90 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 69.43 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 23.58 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 38.02 FEET TO THE EAST LINE OF AFORESAID TRACT 2; THENCE SOUTH 01 DEGREES 56 MINUTES 53 SECONDS EAST ALONG SAID EAST LINE, 63.85 FEET TO THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 88 DEGREES 27 MINUTES 26 SECONDS WEST ALONG SAID SOUTH LINE, 189.51 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 18.47 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 27.41 FEET TO THE POINT OF BEGINNING.

UNOFFICIAL COPY

ALSO THAT PART OF SAID TRACT 2 LYING ABOVE AN ELEVATION OF 646.33 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 656.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT 2; THENCE SOUTH 88 DEGREES 27 MINUTES 26 SECONDS WEST ALONG THE SOUTH LINE OF SAID TRACT, 189.52 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 18.47 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 19.20 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 114.65 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 23.72 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 9.36 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 17.11 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 7.79 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 13.76 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 3.64 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 7.41 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 25.50 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 5.14 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 42.33 FEET; THENCE NORTH 88 DEGREES 33 MINUTES 17 SECONDS EAST, 63.18 FEET TO THE EAST LINE OF AFORESAID TRACT 2; THENCE ALONG SAID EAST LINE THE FOLLOWING 3 COURSES: 1.) SOUTH 01 DEGREES 50 MINUTES 18 SECONDS EAST, 101.03 FEET, 2.) NORTH 88 DEGREES 27 MINUTES 26 SECONDS EAST, 87.23 FEET AND 3.) SOUTH 01 DEGREES 57 MINUTES 41 SECONDS EAST, 105.00 FEET TO THE POINT OF BEGINNING.

ALSO THAT PART OF SAID TRACT 2 LYING ABOVE AN ELEVATION OF 656.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 689.67 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT 2; THENCE SOUTH 88 DEGREES 27 MINUTES 26 SECONDS WEST ALONG THE SOUTH LINE OF SAID TRACT, 189.52 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 18.47 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 19.20 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 114.65 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 67.96 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 03 SECONDS EAST, 8.68 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 5.13 FEET; THENCE NORTH 88 DEGREES 33 MINUTES 17 SECONDS EAST, 48.18 FEET; THENCE NORTH 88 DEGREES 33 MINUTES 17 SECONDS EAST, 63.18 FEET TO THE EAST LINE OF AFORESAID TRACT 2; THENCE ALONG SAID EAST LINE THE FOLLOWING 3 COURSES: 1.) SOUTH 01 DEGREES 50 MINUTES 18 SECONDS EAST, 101.03 FEET, 2.) NORTH 88 DEGREES 27 MINUTES 26 SECONDS EAST, 87.23 FEET AND 3.) SOUTH 01 DEGREES 57 MINUTES 41 SECONDS EAST, 105.00 FEET TO THE POINT OF

UNOFFICIAL COPY

BEGINNING.

EXCEPT THAT PART OF SAID TRACT 2 THE FOLLOWING 2 PARCELS LYING ABOVE AN ELEVATION OF 631.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 646.33 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

PARCEL 1: COMMENCING AT THE NORTHWEST CORNER OF AFORESAID TRACT 2; THENCE NORTH 88 DEGREES 30 MINUTES 15 SECONDS EAST ALONG THE NORTH LINE OF SAID PROPERTY, 45.88 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 54.39 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 8.58 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 8.00 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 26.12 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 3.08 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 14.94 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 8.46 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST A DISTANCE OF 0.28 FEET THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 28.93 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 6.67 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 0.68 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 33.97 FEET THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 9.67 FEET; THENCE SOUTH 38 DEGREES 30 MINUTES 11 SECONDS WEST, 8.72 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 58.82 FEET TO THE POINT OF BEGINNING.

PARCEL 2: COMMENCING AT THE SOUTHWEST CORNER OF AFORESAID TRACT 2; THENCE NORTH 88 DEGREES 27 MINUTES 26 SECONDS EAST ALONG THE SOUTH LINE OF SAID PROPERTY, 44.58 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 18.49 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 38.96 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 28.27 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 38.96 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 28.27 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THAT PART OF SAID TRACT 2 LYING ABOVE AN ELEVATION OF 646.33 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 689.67 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 2; THENCE SOUTH 88 DEGREES 27 MINUTES 26 SECONDS WEST ALONG THE SOUTH LINE OF SAID TRACT, 167.87 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 86.90 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 10.00 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 2.79 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 6.55 FEET;

UNOFFICIAL COPY

THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 17.00 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 6.55 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 1.38 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 10.00 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 21.17 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THAT PART OF SAID TRACT 2 LYING ABOVE AN ELEVATION OF 656.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 689.67 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 2; THENCE SOUTH 88 DEGREES 27 MINUTES 26 SECONDS WEST ALONG THE SOUTH LINE OF SAID TRACT, 167.87 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 134.68 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 3.64 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 7.41 FEET; THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, 25.50 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 11 SECONDS WEST, 21.17 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, 29.14 FEET; THENCE NORTH 88 DEGREES 30 MINUTES 11 SECONDS EAST, 13.76 FEET TO THE POINT OF BEGINNING.

UNOFFICIAL COPY

EXHIBIT E

Legal Description of the South Apartment Parcel

TRACT 2, BEING A SINGLE TRACT OF PROPERTY COMPOSED OF THE FOLLOWING 4 PARCELS:

PARCEL 1: THE WEST 10 FEET OF LOT 11 (EXCEPT THE NORTH 18-1/2 FEET CONVEYED FOR STREET) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET) IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE, AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOT 8 (EXCEPT THE SOUTH 92 FEET AND EXCEPT THE NORTH 18-1/2 FEET CONVEYED FOR STREET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF LOT 9, 98.92 FEET NORTH OF THE NORTH LINE OF NORTH BOULEVARD AS OCCUPIED, THENCE EAST ON A LINE PARALLEL WITH THE NORTH LINE OF NORTH BOULEVARD 50.0 FEET TO THE EAST LINE OF LOT 9 (EXCEPT THE NORTH 18 1/2 FEET CONVEYED FOR STREET) IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 22, 23, 24 AND THE EAST 15 FEET OF LOT 25 IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THE WEST 10 FEET OF LOT 25, ALL OF LOT 26 AND LOT 27 (EXCEPT THE WEST 6 INCHES THEREOF) IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

THE SOUTH 92 FEET OF LOT 8 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE WEST 6 INCHES OF LOT 27 IN HOARD & OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10 TO 16, INCLUSIVE AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF LOT 9, 98.92 FEET NORTH OF THE NORTH LINE OF NORTH BOULEVARD AS OCCUPIED; THENCE EAST ON A LINE PARALLEL WITH THE NORTH LINE OF NORTH BOULEVARD 50.0 FEET TO THE EAST LINE OF LOT 9, ALL IN COOK COUNTY, ILLINOIS.

A STRIP OF LAND 20 FEET, MORE OR LESS, LYING IMMEDIATELY SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 8 AND 9 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND NORTH OF NORTH LINE OF NORTH BOULEVARD IN VILLAGE OF OAK PARK AS ACTUALLY LAID OUT AND ESTABLISHED, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE EAST 15 FEET OF LOT 11 (EXCEPT THE NORTH 18.5 FEET THEREOF) AND ALL OF LOTS 12 AND 13 (EXCEPT THE NORTH 18.5 FEET OF EACH OF SAID LOTS) IN HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES' SUBDIVISION OF LOTS 10, 11, 12, 13, 14, 15, 16 AND THE WEST 13 FEET OF LOT 17 IN SKINNER'S SUBDIVISION IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: THAT PART OF A 15 FOOT WIDE PUBLIC ALLEY LYING SOUTH OF LOTS 11 TO 16 INCLUSIVE, NORTH OF LOTS 22 TO 27 INCLUSIVE AND WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 13, ALL IN AND ESTABLISHED BY HOARD AND OTHERS' SUBDIVISION OF LOT 1 (EXCEPT THE NORTH 100 FEET THEREOF) IN NILES SUBDIVISION OF LOTS 10 TO 16 INCLUSIVE AND THE WEST 13 FEET OF LOT 17 OF SKINNERS SUBDIVISION OF LAND IN THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.,

EXCEPT THEREFROM SAID TRACT 2 THE FOLLOWING 3 PARCELS LYING ABOVE AN ELEVATION OF 631.00 FEET, NORTH AMERICAN VERTICAL DATUM(1988), AND BELOW AN ELEVATION OF 646.33 FEET, NORTH AMERICAN VERTICAL DATUM(1988), DESCRIBED AS FOLLOWS: