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KAREN A. YARBROUGH
COOK COUNTY RECORDER OF DEEDS
DATE: 06/15/2018 03:25 PM PG: 1 OF 156

Prepared By and Return To:

Erin Stach, Esq.
Dentons US LLP
233 S. Wacker Drive
Suite 5900
Chicago, Illinois 60606-6361

18008274 NC 1all

SCRIVENER'S ERROR AFFIDAVIT

I, Michael W. Reschke, am over the age of eighteen years old, and affirm that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief. I am manager of 11 South LaSalle Hotel Partners, LLC, and I am authorized to provide this affidavit on behalf of the Grantor and Grantee identified in the **11 South LaSalle Street, Chicago, Illinois Declaration of Easements and Operating Agreement** recorded as **document number 1810329041 ("Operating Agreement")**. Said Operating Agreement was recorded against the following legal description: See Exhibit A attached hereto and made a part hereof.

This Affidavit is given to provide record notice to all that Exhibit C and Exhibit 2.2(l) were not attached to the Operating Agreement recorded as document number 1810329041 as a result of a scrivener's error. The Operating Agreement attached hereto now includes Exhibit C and Exhibit 2.2(l). The corrected Operating Agreement is attached hereto as Exhibit B and made a part hereof.

Common Address: 11 South LaSalle Street, Chicago, Illinois 60603

Tax ID Number: 17-16-204-035-0000; 17-16-204-036-0000; 17-16-204-037-0000;
17-16-204-042-0000; 17-16-204-043-0000

(signature and notary follows)

Ry ok

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WITNESS my signature this 15 day of June, 2018.



Name: Michael W. Reschke

Title: Manager

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

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STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, Isaura Zavala, a notary public in and for said County and State aforesaid, DO HEREBY CERTIFY that Michael W. Reschke personally known to me to be the same person whose name is subscribed to the foregoing affidavit, appeared before me this day in person and acknowledged signing, sealing and delivering the said affidavit as a free and voluntary act for the uses and purposes therein set forth.

Given under hand and official seal this 15th day of June day of June, 2018.



Isaura Zavala
Notary Public

My Commission expires 10-23, 2018.

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EXHIBIT A

Legal Description of the Land

PARCEL 1:

THE NORTH 90 FEET OF LOT 1 AND THAT PART OF THE NORTH 90 FEET OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 OF SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES EAST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF;

PARCEL 2:

ALSO LOT 3 AND THAT PART OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES WEST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF, EXCEPTING FROM THE AFOREMENTIONED PART OF LOT 2 THAT PORTION OF SAID PART LYING SOUTH OF THE NORTH 90 FEET OF LOT 2 AND FALLING WITHIN THE EAST 15 FEET OF LOT 2.

PARCEL 3:

TOGETHER WITH LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LA SALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

**CORRECTED OPERATING
AGREEMENT**

This space reserved for Recorder's use only.

11 SOUTH LASALLE STREET, CHICAGO, ILLINOIS

DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

**THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING SHOULD
BE RETURNED TO:**

**John J. Lawlor
Dentons US LLP
233 S. Wacker Drive
Suite 7800
Chicago, Illinois 60606**

**PIN NUMBERS:
17-16-204-035-0000; 17-16-204-036-0000
17-16-204-037-0000; 17-16-204-042-0000
17-16-204-043-0000**

**PROPERTY ADDRESS:
11 South LaSalle Street
Chicago, Illinois 60603**

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LIST OF EXHIBITS TO 11 SOUTH LASALLE STREET, CHICAGO, ILLINOIS DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

<u>EXHIBIT LETTER OR NUMBER</u>	<u>TITLE OR DESCRIPTION</u>
A	Legal Description of the Land
B-1	Legal Description of the Hotel Parcel
B-2	Legal Description of the Retail Parcel
C	Survey of the Property
D	Rules and Regulations
2.2(e)	Rooftop Communications Facilities
2.2(l)	Location of 100' Basement Area Referenced in Section 2.2(l)
6.1(a)	Wastewater/Sanitary Sewer
6.1(b)	Stormwater Drainage Facilities
6.1(c)	Fire Pump, Combination Standpipe System and Life Safety System
6.1(d)	[Intentionally Omitted]
6.1(e)	[Intentionally Omitted]
6.1(f)	Loading Facilities
6.1(g)	Exterior Lighting
6.1(h)	Exterior Window Washing
6.1(i)	Maintenance of Sidewalks and Snow Removal
6.1(j)	Facade and Window Maintenance
6.1(k-1)	Shared Freight Elevator Maintenance
6.1(q)	Natural Gas, Electrical and Telephone/Cable/Data Services
6.2(a)(ii)	Roof Maintenance
6.2(b)(i)	Domestic (City) Water
6.2(b)(ii)	Chilled Water
6.2(b)(iv)	Steam System
6.6	Billing and Payment
7.3(b)	Prohibited Uses, Activity and Behavior
7.4(a)	Retail Parcel Sign Regulations
17.1	Depository Agreement
Schedule 1	Description of Project Plans by Cross-Reference
Schedule 2	Consent of Mortgagee

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11 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS

DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

THIS DECLARATION OF EASEMENTS AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 12th day of April, 2018, by 11 SOUTH LASALLE HOTEL PARTNERS, LLC, a Delaware limited liability company ("Declarant").

RECITALS:

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

B. Declarant is the record legal title holder of that parcel of land situated in the City of Chicago, Cook County, State of Illinois which is legally described on Exhibit A attached hereto and made a part hereof (the "Land").

C. As a result of conveyancing by Declarant, the two (2) parcels described below shall be created:

(aa) The hotel parcel which is legally described on Exhibit B-1 attached hereto (the "Hotel Parcel").

(ii) The retail parcel which is legally described on Exhibit B-2 attached hereto ("Retail Parcel").

D. Declarant has developed on the Hotel Parcel a hotel project (the "Hotel Project").

E. Declarant has renovated the retail space in the Retail Parcel (the "Retail Project").

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

NOW, THEREFORE, in consideration of the Recitals and the covenants contained herein, as of the Effective Date of this Agreement, Declarant declares the Property, as defined

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

ARTICLE 1

DEFINITIONS

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

- (a) **"Affected Owner"** – As defined in **Section 12.3.**
- (a-1) **"Affiliate"** – Any Person controlling, under common control with or controlled by the Person in question. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or actions of a Person, whether through ownership of voting securities, by contract or otherwise.
- (b) **"Agreement"** – As defined in the PREAMBLE to the Reciprocal Easement and Operating Agreement.
- (c) **"Alterations"** – As defined in **Section 15.1(a).**
- (d) **"Altering Owner"** – As defined in **Section 15.1(a).**
- (e) **"Applicable Percentage"** – As defined in **Paragraph 5 of Exhibit 6.6.**
- (f) **"Approved Division"** – The division of any costs, expenses or other monetary obligation under this Agreement as among the Owners pursuant to this Agreement in the following percentages, which percentages shall be based upon the square footage of each Owner's respective Parcel, divided by the total square footage for all of the Parcels, collectively (i.e., 350,946 sf): (i) Hotel Owner: 96.596% (i.e., 339,000 sf/350,946 sf) and (ii) Retail Owner: 3.404% (i.e., 11,946 sf/350,946 sf).
- (g) **"Arbitrable Dispute"** – As defined in **Article 12.1** hereof.
- (h) **"Arbitration Cap"** – As defined in **Section 12.1.**
- (h-1) **"Arbitration Rules"** – As defined in **Section 12.2(a).**
- (i) **"Architect"** – As defined in **Section 19.1(a).**

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- (j) **“Assessor”** – As defined in **Section 8.1**.
- (k) **“Award”** – As defined in **Section 14.1**.
- (l) **“Building”** – The building and related Improvements located on the Parcels, along with any additions or alterations thereto or replacements thereof.
- (m) **“City”** – The City of Chicago, Illinois, a municipal corporation.
- (n) **“Common Walls, Floors And Ceilings”** – All common structural and partition walls, columns, floors and ceilings situated on or adjoining two Parcels, or located on one Parcel but forming the walls, columns, floors or ceilings of an adjoining Parcel. As to Common Floors and Ceilings, the Owner whose Parcel is at the higher elevation shall be deemed to own the floor/ceiling slab constituting a Common Floor and Ceiling located below such Owner’s Parcel and located above the adjacent Parcel below, and such adjacent Parcel Owner shall have the right to use the ceiling slab for reasonable purposes. Other than as set forth in this Agreement, the Owner of any Common Floor and Ceiling shall be solely responsible for all Maintenance in connection with the same, at such Owner’s sole expense, subject to the negligent acts or omissions of the adjacent Owner beneath and subject to such adjacent Owner’s use of the ceiling slab for unreasonable purposes. Any Common Wall located between two Parcels shall be deemed to be a “party wall”, owned 50%/50% by each adjoining Owner. Other than as set forth in this Agreement, the Maintenance of such Common Walls shall be the joint responsibility of such adjoining Owners, with each such Owner to pay 50% of the cost of such Maintenance.
- (o) **“Communications Facilities”** – As defined in **Exhibit 2.2(e)**.
- (p) **“Consumer Price Index”** – The Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.
- (q) **“Contributing Party”** – As defined in **Paragraph 1(a)** of **Exhibit 6.6**.
- (q-1) **“Core and Shell”** – As defined in **Section 9.1(a)(ii)**.
- (r) **“Creditor Owner”** – An Owner (i) to whom payment of money or other duty or obligation is owed under this Agreement by another Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Agreement or (ii) who has exercised any self-help remedy provided for in this Agreement. An Owner may be a Creditor Owner notwithstanding that the term “Creditor Owner” is not specifically stated in a particular provision of this Agreement.

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- (s) **"Default Amount"** – As defined in **Section 11.1(b)**.
- (t) **"Defaulting Owner"** – An Owner who has failed to perform any of its duties or obligations as and when required under this Agreement or to make payment of money owed under this Agreement to another Owner beyond any applicable cure period. An Owner may be a Defaulting Owner notwithstanding that the term **"Defaulting Owner"** is not specifically stated in a particular provision of this Agreement.
- (u) **"Depositary"** – The person or entity, from time to time acting pursuant to **Article 17**.
- (u-1) **"Disaster Allocation"** – As defined in **Section 10.5(b)**.
- (v) **"Easements"** – All easements declared, granted or created pursuant to the terms and provisions of this Agreement.
- (w) **"Effective Date"** – The date specified in the PREAMBLE on Page 1 of this Agreement.
- (x) **"Elevator Banks"** – The northernmost elevator bank and the southernmost elevator bank which are designated on the Project Plans.
- (y) **"Emergency Situation"** – A situation (i) impairing or imminently likely to impair structural support of any Parcel or any Improvements constructed thereon; (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to any of the Improvements constructed on any portion of the Property, or any property in, on, under, within, upon or about the Property; (iii) causing or imminently likely to cause substantial economic loss to an Owner, directly or indirectly; or (iv) substantially disrupting or imminently likely to substantially disrupt business operations in any Parcel. The issuance of a building, health, fire or other code or Law compliance violation may constitute an Emergency Situation if one or more of the foregoing criteria are met by reason thereof. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.
- (y-1) **"Existing Mortgage"** – That certain Mortgage, Assignment of Leases and Rents, Security agreement and Fixture Filing (the **"Mortgage"**) on the Property dated as of December 30, 2013 and recorded December 31, 2013 as Document Number 1336519201 with the Cook County Recorder of Deeds, as modified from time to time, by and between Declarant and Massachusetts Mutual Life Insurance Company.
- (z) **"Estoppel Certificate"** – As defined in **Section 16.1**.
- (z-1) **"Exclusive Retail Parcel Elevator"** – As defined in **Section 2.2(j)(iv)**.

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(z-2) **“Exclusive Uses Granted Other Occupants”** – As described in **Section 7.3(c)**.

(z-3) **“Existing Insurer”** – As defined in **Section 9.1(h)**.

(z-4) **“Existing Policy”** – As defined in **Section 9.1(h)**.

(z-5) **“Exterior Lighting and Exterior Hotel Signs”** – As described in **Section 4.2(h)**.

(aa) **“Façade”** – The Hotel Façade and Retail Façade, collectively.

(aa-1) **“Façade Report”** – As defined in **Section 10.1(a)(ii)(B)**.

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

(cc) **[Intentionally Omitted]**.

(dd) **“Hazardous Materials”** - Any hazardous substance, pollutant, contaminant, or waste regulated under the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. §9601 et seq.); asbestos and asbestos-containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136 et seq.); PCBs and other substances regulated under the Toxic Substances Control Act, as amended (7 U.S.C. §136 et seq.); source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, as amended (29 C.F.R. §1910.1200 et seq.); industrial process and pollution

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control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.); and other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean-up.

(ee) **"Hotel Communications Facilities"** – As defined in **Exhibit 2.2(e)**.

(ff) **"Hotel Façade"** - The exterior walls of the Hotel Parcel Improvements, consisting of the glass, granite, terra cotta, limestone and other facing materials or coverings attached to the concrete or steel structural supports forming the curtain wall of the Building, window frames, window systems, joints and seals, but excluding (i) the Retail Façade, and (ii) the structural supports for the exterior wall of the Building.

(gg) **"Hotel Manager"** – The manager then operating a hotel in the Hotel Parcel. As of the Effective Date, there is no Hotel Manager except for Residence Inn by Marriott, LLC

(hh) **"Hotel Management Agreement"** – the agreement between Hotel Manager and the Hotel Owner regarding the management and operation of the hotel on the Hotel Parcel, as the same may be amended or replaced from time to time.

(ii) **"Hotel Owned Facilities"** - Facilities owned by Hotel Owner and now located in the Retail Parcel as of the Effective Date, and any additional Facilities owned by Hotel Owner which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located in the Retail Parcel.

(jj) **"Hotel Owner"** – The Owner, from time to time, of the Hotel Parcel, which may be the Declarant.

(kk) **"Hotel Parcel"** – As defined in **Section C(i)** above.

(ll) **"Hotel Parcel Appraisal"** – As defined in **Section 10.5(b)**.

(mm) **"Hotel Parcel Improvements"** - All improvements constructed upon and within Hotel Parcel and not constituting Retail Owned Facilities.

(nn) *[Intentionally Omitted.]*

(oo) **"Hotel Property"** – A collective reference to the Hotel Parcel, the Hotel Parcel Improvements and the Hotel Owned Facilities.

(pp) *[Intentionally Omitted.]*

(qq) **"Impacted Owner"** - As defined in **Section 7.1(a)**.

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- (rr) **“Improvements”** - Any or all, as the context may dictate, of the Hotel Parcel Improvements or the Retail Parcel Improvements.
- (ss) **“Indemnifying Owner”** - As defined in **Section 5.1**.
- (tt) **“Indemnitee”** - As defined in **Section 5.1**.
- (ss-1) **“Individual Builder’s Risk Policy”** - As defined in **Section 9.2(f)(ii)**.
- (uu) **“Inspecting Owner”** - As defined in **Section 7.5**.
- (tt-1) **“Interested Parties”** - As defined in **Section 10.2(a)(i)**.
- (vv) **“Land”** - The Hotel Parcel and the Retail Parcel, collectively.
- (vww) **“Law”** or **“Laws”** - All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Property, or any parts thereof, including, but not limited to, the applicable requirements of (i) Title 16 of the United States Code, together with the United States Secretary of the Interior’s Standards for the Treatment of Historic Properties (collectively, the **“Federal Historic Preservation Requirements”**), and (ii) the City’s Landmarks Ordinance, together with the Rules and Regulations of the Commission on Chicago Landmarks (collectively, the **“Landmarks Ordinance Requirements”**).
- (xx) **“Legal Process”** - As defined in **Section 20.2(b)**.
- (yy) **“Liening Owner”** - As defined in **Section 7.1(a)**.
- (zz) **“Loading Area”** - The intended loading area outside of and immediately adjacent to the Building in the vicinity of the public alleys running parallel to and east of LaSalle Street and perpendicular to LaSalle Street, as depicted on the Project Plans.
- (aaa) **“Loading Facilities”** - As defined in **Section 2.2(d)**.
- (bbb) **“Maintenance”**, **“Maintaining”** or **“Maintain”** - Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, clearing, landscaping, painting, installation, restoration, reconstruction and replacement when necessary or desirable, including without limitation, services to be provided pursuant to **Article 6**.

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- (ccc) *[Intentionally Omitted.]*
- (bbb-1) "Mandatory Façade Inspection" - As defined in Section 10.1(a)(ii)(B).
- (ddd) "Mechanics' Lien Act" - As defined in Section 15.4(a).
- (eee) "Mortgage" - All mortgages, trust deeds, indentures and similar encumbrances and instruments securing indebtedness and financial obligations which have been recorded against the Building, the Property, or any Parcel, as applicable.
- (fff) "Mortgagee" - As defined in Section 21.11(a).
- (ggg) "Multiple Owners" - As defined in Section 20.2(a).
- (hhh) "Net Capitalized Cost of Replacement" - As defined in Paragraph 7 of Exhibit 6.6.
- (iii) "Net Salvage Value of The Capital Item Being Replaced" - As defined in Paragraph 5 of Exhibit 6.6.
- (hhh-1) "New Core and Shell" - As defined in Section 9.2(f)(ii).
- (hhh-2) "New Core and Shell Proceeds" - As defined in Section 9.2(f)(ii).
- (jjj) "Non-Performing Owner" - As defined in Section 13.4.
- (kkk) "Notice" - As defined in Section 20.1(a).
- (lll) "Objecting Party" - As defined in Section 15.2(d).
- (mmm) "Occupant" - Any Person (including, but not limited to, any hotel guest in the Hotel Parcel) from time to time entitled to the use and occupancy of any portion of any Parcel as an Owner or under any lease, sublease, license, concession or other similar agreement.
- (nnn) *[Intentionally omitted.]*
- (ooo) *[Intentionally omitted.]*
- (ppp) "Operating Expenses" - As defined in Paragraph 5 of Exhibit 6.6.
- (qqq) "Owned Facilities" - A collective reference to the Hotel Owned Facilities and the Retail Owned Facilities.

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- (rrr) **“Owner(s)”** - The Hotel Owner and its successors and assigns and the Retail Owner and its successors and assigns or any of them, as the context requires.
- (qqq-1) **“Owner Insured Property”** - As defined in **Section 9.2**.
- (sss) **“Parcel(s)”** - As the context may dictate, the Hotel Parcel and the Retail Parcel, or any of them.
- (rrr-1) **“Permissive Repair”** - As defined in **Section 10.3(a)**.
- (ttt) **“Permittees”** - All Occupants and the officers, directors, members, managers, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of any Parcel.
- (uuu) **“Person”** - Any individual, partnership, firm, association, corporation, limited liability company, trust, land trust or any other form of business or not-for-profit organization or governmental entity.
- (vvv) **“Pipes”** - All pipes, fittings, ducts, conduits, lines, braces, collars and other supporting elements serving a Parcel or Parcels.
- (www) **“Prior Lien”** - As defined in **Section 11.2(b)**.
- (www) [Intentionally Omitted.]
- (xxx) **“Progress Payment”** - As defined in **Paragraph 2 of Exhibit 6.6**.
- (xxx-1) **“Prohibited Uses”** - As described in **Section 7.3(b)**.
- (yyy) **“Project”** - The Hotel Project and Retail Project, collectively.
- (yyy-1) **“Project Insurance”** - As defined in **Section 9.1**.
- (yyy-2) **“Project Insurance Carrier”** - As defined in **Section 9.1(e)(ii)**.
- (zzz) **“Projection Notice”** - As defined in **Paragraph 2(i)** of **Exhibit 6.6**.
- (aaaa) **“Projections”** - As defined in **Paragraph 2(i)(A)** of **Exhibit 6.6**.
- (bbbb) **“Project Plans”** - Plans and specifications described by cross-reference in **Schedule 1**, attached hereto and made a part hereof.
- (cccc) **“Project Quality Standards”** - The standards required to construct, operate, maintain, repair and restore the Project (including, but not limited to, all Improvements) in a condition and quality level consistent with (a) a high-quality mixed

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use, high-rise development containing an upper upscale, select service branded hotel, operated and maintained in accordance with the system standards of the Hotel Manager, and (b) comparable properties in downtown Chicago and (c) the standards for Maintenance established in Section 10.1 of this Agreement. In the event of any conflict between the standards described in (a) and (b) in the immediately preceding sentence, the higher standard shall control.

(dddd) **"Property"** - A collective reference to the Hotel Parcel, Hotel Parcel Improvements, Hotel Owned Facilities, Retail Parcel, Retail Parcel Improvements, and Retail Owned Facilities. A survey of the Property legally describing the Hotel Parcel and the Retail Parcel is attached hereto as Exhibit C and made part hereof

(eeee) **"Property Appraisal"** - As defined in Section 10.5(b).

(eeee-1) **"Real Estate Taxes and Special Assessments"** - shall mean all federal, state, county, or local taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including without limitation, real estate taxes, general and special assessments, transit taxes, water and sewer rents, sales taxes, gross receipts taxes, rent taxes, transfer taxes on leaseholds (if any) and personal property taxes. However, "Real Estate Taxes and Special Assessments" shall not include: income taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, and estate taxes; provided that if an income or excise tax is levied by any governmental entity in lieu of or as a substitute for ad valorem real estate taxes (in whole or in part), then any such tax or excise shall constitute and be included within the term "Real Estate Taxes and Special Assessments." "Real Estate Taxes and Special Assessments" shall include the commercially reasonable costs of consultants retained in an effort to lower taxes and all commercially reasonable costs incurred in disputing any taxes or in seeking to lower the tax valuation.

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

(gggg) **"Replacing Party"** - As defined in Paragraph 1(a) of Exhibit 6.6.

(hhhh) **"Requesting Owner"** - As defined in Section 16.1.

(iiii) **"Retail Communications Facilities"** - As defined in Exhibit 2.2(e).

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

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(kkkk) “**Retail Owned Facilities**” - Facilities owned by Retail Owner and now located (or which may, pursuant to this Agreement or other agreement of the Owners, hereafter be located) in the Hotel Parcel.

(llll) “**Retail Owner**” – The Owner, from time to time, of the Retail Parcel.

(mmmm) “**Retail Parcel**” – As defined in **Recital C(ii)** above.

(nnnn) “**Retail Parcel Appraisal**” – As defined in **Section 10.5(b)**.

(oooo) “**Retail Parcel Improvements**” - All improvements constructed upon and within Retail Parcel and not constituting Hotel Owned Facilities.

(oooo-1) “**Retail Parcel Sign Regulations**” – As described in **Exhibit 7.4(a)** below.

(pppp) “**Retail Project**” - As defined in **Recital E** above.

(qqqq) “**Retail Property**” – A collective reference to the Retail Parcel and the Retail Parcel Improvements.

(rrrr) “**Review**” - As defined in **Section 7.5**.

(rrr-1) “**Rooftop Communication Facilities**” - As described in **Exhibit 2.2(e)**.

(rrr-2) “**Rules and Regulations**” As defined in **Section 7.6**.

(ssss) “**Shared Freight Elevators**” - As defined in **Section 2.2(j)(ii)**.

(tttt) “**Sidewalks**” - As defined in **Section 6.1(i)**.

(uuuu) “**Signage Criteria**” - As defined in **Section 7.4(d)**.

(vvvv) “**Statement**” - As defined in **Paragraph 2(vii)** of **Exhibit 6.6**.

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

(xxxx) [Intentionally Omitted.]

(yyyy) [Intentionally Omitted.]

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(zzzz) "**2015 Equivalent Dollars**" - Means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2015. The 2015 Equivalent Dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (expressed as a percentage, but not less than zero), the numerator of which is the difference obtained by subtracting (i) the Consumer Price Index for January, 2015 from (ii) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 2015.

(aaaa) "**Unavoidable Delay**" - As defined in **Section 13.3**.

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

(cccc) "**Utility Facilities**" or "**Utility Facility**" - Any Facility used for providing Utility Services.

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

(eeee) "**Work**" - As defined in **Section 18.1(a)**.

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

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ARTICLE 2

EASEMENTS BURDENING THE HOTEL PARCEL

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

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

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

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

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

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

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

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

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

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

(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time be enacted by Hotel Owner or its Occupants (as applicable), a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Hotel Parcel as are reasonably necessary or desirable to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Retail Parcel including without limitation (a) the Retail Owned Facilities, including the Retail Communication Facilities described in **Section 2.2(e)** and in **Exhibit 2.2(e)** and (b) the Loading Area and related Facilities referenced in **Section 2.2(d)** below; (ii) permit the Retail Owner to provide to the Hotel Parcel those services to be performed by such Owner as described in **Article 6** of this Agreement; or (iii) perform (x) construction work in the Retail Parcel in connection with Retail Owner's construction of the Retail Parcel Improvements (as applicable); provided, however, that such construction easement right shall be temporary and shall automatically terminate upon completion of

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the Retail Parcel Improvements, (y) Alterations, pursuant to Article 15 hereof, and (z) restoration after damage or destruction, pursuant to Article 10 hereof, or condemnation, pursuant to Article 14 hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, stairways, entryways, and other passageways (i) at all times the same are made available for use by the public by Hotel Owner, and at all times (whether or not open to the public) with respect to those stairways and other Facilities providing access to the Retail Parcel, subject however to the terms of Section 2.2(h), below; (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by Hotel Owner and Retail Owner. Notwithstanding anything set forth in this Agreement to the contrary, Retail Owner shall have no right under this Section 2.2(a), or otherwise under this Agreement, for ingress or egress or other access to and from (i) any portion of the Hotel Parcel above the second floor of the Building, or (ii) any stairwell or elevator other than to access the first floor, second floor and basement levels of the Building in order to exercise Retail Owner's rights and perform its obligations under this Article 2, subject however to the terms of Section 2.2(j) and Section 2.2(k), below and subject to a reasonable easement of access for the limited purpose of installing, operating and Maintaining Rooftop Communication Facilities per Section 2.2(e) and Exhibit 2.2(e).

(b) Use and Maintenance of Pipes and Facilities. A non-exclusive easement for Persons, material and equipment over, on, across and through such portions of the Hotel Parcel as are reasonably necessary for the intended use and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of all Pipes and Facilities, if any, which are (i) located in the Hotel Parcel (including Retail Owned Facilities), and (ii) connected to Pipes or Facilities located in the Retail Parcel (as applicable) which provide or are reasonably necessary to provide the Retail Parcel (as applicable) with any Utility Service or other service reasonably necessary or desirable to the operation of the Retail Parcel. Notwithstanding anything contained in this Agreement to the contrary, from and after the date of this Agreement any use of the Retail Parcel as either a restaurant or as a restroom shall not entitle the Retail Owner to install ventilation shafts or Facilities serving such restaurant or restroom through, or create any easement rights over or through, the Hotel Owner's Parcel without the prior written consent of the Hotel Owner which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything set forth herein to the contrary, Hotel Owner shall not be deemed unreasonable if it fails to consent because the Mortgagee of the Hotel Parcel will not consent or because of the terms of any lease or because of any agreement with the Occupant of the Hotel Parcel or any portion thereof or if Retail Owner has other reasonable alternatives.

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

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(d) **Loading Area**. A non-exclusive easement to use the Loading Area and related Facilities (collectively, the "**Loading Facilities**") in accordance with rules and regulations established by Hotel Owner from time to time, which rules and regulations shall be enforced in a non-discriminatory manner. Hotel Owner shall contract for trash removal service for the entire Building, subject to reimbursement from the other Owners in accordance with **Exhibit 6.1(f)** of this Agreement. Hotel Owner shall coordinate the use of the Loading Area and related Facilities by the Owners and their respective Permittees (including, but not limited to, scheduling deliveries and shipments, Occupant move-in and move-out, allocation of spaces and bays within the Loading Facilities to reasonably accommodate, in its reasonable discretion, the requirements of the Owners and their respective Occupants and to ensure compliance with the City's Municipal Code). Subject to the foregoing obligation to consult and coordinate, the Owners shall each have the right to access the Loading Facilities, and any dispute relating thereto shall constitute an Arbitrable Dispute.

(e) **Rooftop Communications Facility**. To and for the benefit of the Retail Owner and not for the purpose of providing communication or other services to the public, a non-exclusive easement for the installation, use and Maintenance of Retail Communications Facilities on the roof of the Building and Facilities within the Hotel Parcel serving the same, which are currently available or become available through technological advances, in accordance with the provisions of **Exhibit 2.2(e)**. In connection therewith, Retail Owner shall also have a non-exclusive easement for passenger elevator and stairwell use for the limited purpose of accessing the roof of the Building in order to install, use and Maintain such Retail Communications Facilities. Notwithstanding the foregoing, Retail Owner shall not have any right to (A) install any Facilities on the roof of the Building other than Retail Communications Facilities and Facilities serving the Retail Parcel, or (B) use the roof of the Building for any purpose other than as expressly set forth in this **Section 2.2(e)**. The portion of the roof surface which is to be used for Retail Communications Facilities shall (i) not exceed 500 square feet and (ii) be located and installed in a manner that will (A) be reasonably accessible by safe means, (B) protect the safety of Persons entering upon the roof, the integrity of the roof and the appearance of the Building, and (C) provide line-of-sight communications to earth-based communications towers and Building antennas and satellite broadcasts. The location of all Retail Communications Facilities shall be subject to the reasonable approval of the Hotel Owner, taking into account the reasonable input of the Retail Owner. Retail Owner's exercise of the foregoing easement rights shall be subject to and in accordance with rules and regulations established by Hotel Owner from time to time regarding, among other things, (i) the qualifications of contractors authorized to install or perform Maintenance of such Retail Communications Facilities, (ii) procedures to be followed in connection with the installation and Maintenance of such Retail Communications Facilities in order to ensure that (A) the integrity of the roof is maintained, (B) Retail Communications Facilities are appropriately affixed to the roof to prevent injury to persons and damage to property, (C) such installation is completed in accordance with the City's Municipal Code, (D) the appearance of the Building is not adversely affected, and (E) sufficient prior written notice is given to provide the Hotel Owner an opportunity to have Retail

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Owner's activity accompanied by a representative of Hotel Owner. Such rules and regulations shall be enforced in a non-discriminatory manner.

(f) **Utility Services.** A non-exclusive easement for Utility Service purposes required by the Retail Parcel and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Retail Parcel in those areas of the Hotel Parcel where such Utility Facilities are currently located or may, pursuant to this Agreement, hereafter be located (including, without limitation, access to the basement levels of the Building for such purposes). If, at any time, it becomes necessary for the operation of the Retail Parcel to relocate or add to utility easements (including installation of Utility Facilities) other than where located in the Hotel Parcel or to where they may be located in the future in the Hotel Parcel pursuant to this Agreement in order to provide or upgrade required Utility Service to the Retail Parcel, Hotel Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by the Retail Owner and Hotel Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Hotel Parcel for the purposes for which the Hotel Parcel is used, and do not unduly inconvenience the Owner or Occupant(s) of, or cause any business interruption within, the Hotel Parcel, (2) such relocation shall not cause any interruption of Utility Services to the Hotel Parcel, increase the cost of utility services to the Hotel Parcel or change any points of connection between such Utility Facilities and the Hotel Parcel, unless the Hotel Owner agrees in writing to the aforesaid and Retail Owner pays all costs of relocating such connection points; (3) Retail Owner shall promptly apprise the Hotel Owner regarding the new location and provide the Hotel Owner at least fifteen (15) business days written notice prior to locating any utility easements and provide the opportunity to allow the Retail Owner's activity to be accompanied by a representative of Hotel Owner; and (4) the Retail Owner shall pay the reasonable costs and expenses incurred by Hotel Owner in connection with granting such easement. Hotel Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel, or otherwise adversely affect the Utility Services to any other Parcel, (ii) Hotel Owner shall not change any points of connection between such Utility Facilities and the other Parcels, unless Hotel Owner pays all costs of relocating such connection points that are incurred by Retail Owner and (iii) Hotel Owner shall promptly apprise the Retail Owner regarding the new location of any easements and provide Retail Owner at least fifteen (15) business days written notice prior to relocating any utility easements and provide the opportunity to allow the Hotel Owner's activity to be accompanied by a representative of Retail Owner. Notwithstanding anything set forth herein to the contrary, Hotel Owner shall not be deemed unreasonable if it fails to grant a relocation of an existing Easement, or a new Easement, because Hotel Parcel's Mortgagee will not consent to such relocation or because of any agreement with an Occupant of the Hotel Parcel or any portion thereof then in effect or if Retail Owner has other reasonable alternatives.

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

(h) **Encroachments.** An exclusive easement permitting the existence of encroachments of six (6) inches or less if such encroachments result from their present location or from the construction or permitted renovations of any of the Retail Parcel Improvements from what is otherwise specified or depicted in the Project Plans or if, by reason of settlement or shifting of the such Improvements, any part of such Improvements or Retail Owned Facilities encroaches or shall hereafter encroach upon any part of the Hotel Parcel. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements do not either materially enlarge the encroachment or materially interfere with the use, operation or maintenance of the Hotel Parcel or Utility Service for the Hotel Parcel. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(i) **Retail Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Retail Owned Facilities in the Hotel Parcel in their present locations or as otherwise specified or depicted in the Project Plans or relocated pursuant to the terms of this Agreement.

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

(i) Subject to the terms of Section 2.2(j)(ii), (iii) and (iv), below, Hotel Owner and its Permittees shall have the exclusive right to use the Elevator Banks for passenger service.

(ii) With respect to freight elevator service, Retail Owner and its Permittees shall have the non-exclusive right to use (a) the elevator located in the northernmost Elevator Bank and labeled "Elevator 10" on the Project Plans; and (b) the elevator located in the southernmost Elevator Bank and labeled "Elevator 1" on the Project Plans (collectively the "Shared Freight Elevators"), on a twenty-four (24) hour, seven (7) day a week basis, for limited travel among "Level 1", "Level 2" and Level B-1 of the Building (as so labeled on the Project Plans) for the delivery and removal of foods, beverages, furniture, fixtures, equipment, office supplies and other items necessary or convenient for the operation of the Retail Parcel, for maintenance, and for transport of construction materials, equipment and personnel. For the avoidance of doubt, in no event shall the foregoing be deemed to provide Retail Owner with the right to use the Shared Freight Elevator for travel to floors of the Building above Level 2 or access to floors below Level 1 (except for the B-1 Level of the Building) and Hotel Owner shall have the right to

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prohibit such elevator access by “locking off” the elevators for such purpose or otherwise. Retail Owner’s use of the Shared Freight Elevators shall be subject to Hotel Owner’s scheduling and security requirements and shall be in accordance with rules and regulations established by Hotel Owner from time to time, which rules and regulations shall be reasonably enforced. Notwithstanding anything set forth herein to the contrary, the Hotel Owner and the Retail Owner acknowledge that the aforesaid Shared Freight Elevators are also to be utilized as passenger elevators and that Hotel Owner and its Occupants shall have the priority right to use the Shared Freight Elevators in connection with the day-to-day operations of the hotel in the Hotel Parcel; provided, however, Hotel Owner shall use commercially reasonable efforts to accommodate Retail Owner’s use of the Shared Freight Elevators by using other freight elevators in the Hotel Parcel if such other elevators are available.

(iii) Hotel Owner shall own the Elevator Banks and related Facilities and shall be solely responsible for Maintenance and for the cost of Maintenance thereof.

(iv) Hotel Owner shall own the Shared Freight Elevators and related Facilities and shall be solely responsible for the Maintenance thereof, subject to reimbursement by Retail Owner in accordance with **Section 6.1(k-1)** hereof. Notwithstanding anything contained herein to the contrary, Retail Owner shall own the separate freight elevator which serves only the Retail Parcel (“**Exclusive Retail Parcel Elevator**”) and related Facilities and shall be solely responsible for the Maintenance thereof at Retail Owner’s sole expense.

(k) **Stairwells.** Subject to the terms of **Section 2.2(e)**, a non-exclusive easement in the existence of, and for ingress and egress on, over, across and through, only the following stairwells and attendant Facilities located within the Hotel Parcel: the stairwells and attendant Facilities shown on the Project Plans as “stairs” but only between Level 1 and Level 2 of the Building.

(l) **Basement Facilities.** To and for the benefit of the Retail Parcel and Retail Owner, but subject to the terms of Section 2.2(b), above, a non-exclusive easement for the installation, use, and Maintenance of all mechanical and utility Retail Owned Facilities in the basement levels of the Building on the Hotel Parcel which are located in such basement levels as of the Effective Date, and subsequent Retail Owned Facilities serving the same, in such locations on the Hotel Parcel as are mutually acceptable to the Hotel Owner and Retail Owner, provided the location in question is not objectionable to a Mortgagee of the Hotel Parcel or to an Occupant of the Hotel Parcel under the terms of its occupancy, and there is no reasonable alternative, and provided further that the Retail Owner and Hotel Owner first in the case of each such use by either Retail Owner or by an Occupant of the Retail Parcel Occupant mutually agree in an instrument between Hotel Owner and the Retail Owner on fair market compensation to the Hotel Owner from the Retail Owner such use of said location. The aforesaid include an approximately 100 square foot location in the basement of the Hotel Parcel at the

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location shown on Exhibit 2.2(1) for HVAC equipment Facilities owned by either Retail Owner or an Occupant of the Retail Parcel serving the Retail Parcel as of the date of this Declaration which satisfies the aforesaid terms.

ARTICLE 3

[INTENTIONALLY OMITTED]

ARTICLE 4

EASEMENTS BURDENING THE RETAIL PARCEL

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

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

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

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

(d) In exercising an Easement granted under this Article 4, Hotel Owner shall: (i) have the right to ingress and egress over, through and upon the Retail Parcel to the extent necessary to exercise the rights granted by such Easement; and (ii) minimize the impact of its exercise on Retail Owner and Occupants of the Retail Parcel, taking into consideration the impact of any disruption on Retail Owner and such Occupants, as well as business operations in the Retail Parcel. Hotel Owner acknowledges that retail uses are operating within the Retail Parcel and, accordingly, in exercising its respective easement rights contemplated under either this Article 2 or in any other provision of this Agreement, Hotel Owner shall account for the unique aspects and needs of such retail uses (for example, if Hotel Owned Facilities require Maintenance in a non-Emergency Situation that must be undertaken within retail space, Hotel Owner shall provide reasonable notice to the Retail Owner and coordinate such Maintenance with Retail Owner and use commercially reasonable efforts to cause such Maintenance to be performed outside of normal business hours and at such times as to also minimize any disruption of guests of the Hotel property; and if Maintenance in an Emergency Situation is required within retail space, Hotel Owner shall make commercially

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reasonable efforts to provide reasonable notice to the Owner of the Retail Parcel (taking into account the Emergency Situation) and coordinate such Maintenance with Retail Owner, taking into account the nature of the Emergency Situation). Notwithstanding anything to the contrary contained herein, in the event any access, use, repair, Maintenance or other right pursuant to which an Easement is granted either under this **Article 4** or under any other provision of this Agreement may be effectively exercised without entering the Retail Parcel (or any other Owner's Parcel), or conducting any invasive procedures within the Retail Parcel (or any other Owner's Parcel), or otherwise disrupting the use, operation or the rights of Occupants within the Retail Parcel (or any other Owner's Parcel), Hotel Owner shall use commercially reasonable efforts to exercise such rights without entering into, conducting any invasive procedures within or otherwise disrupting the use of the Retail Parcel or its Owner or Occupants of any portion of the Retail Parcel (for example, and in no way limiting the foregoing, if Hotel Owner can reasonably access a Utility Facility either from the Hotel Parcel or the Retail Parcel, the Hotel Owner shall perform such work, and utilize such access, from the Hotel Parcel).

(e) [Intentionally Omitted.]

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

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

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

(a) **Ingress and Egress.** Subject to the security procedures that may, from time to time, be enacted by Retail Owner or its Occupants (as applicable), a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Retail Parcel as are reasonably necessary to: (i) permit the use, operation and Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of the Hotel Parcel, including, without limitation, the Hotel Owned Facilities (including the Hotel Communications Facilities described in **Exhibit 2.2(e)**); (ii) permit Hotel Owner to provide to the Retail Parcel those services to be performed by such Owner as described in **Article 6** and **10.1(a)(ii)(B)** of this Agreement or (iii) perform (x) all construction work in the Hotel Parcel in connection with Hotel Owner's construction of the Hotel Parcel Improvements; provided, however, that such construction easements shall be temporary and shall automatically terminate upon completion of the Hotel Parcel

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Improvements (y) Alterations, pursuant to **Article 15** hereof, and (z) restoration after damage or destruction, pursuant to **Article 10** hereof, or condemnation, pursuant to **Article 14** hereof. The foregoing easement for ingress and egress includes, without limitation, the right of pedestrian ingress and egress across, over and through corridors, entryways and other passageways (i) at all times the same are made available for use by the public by Retail Owner, and at all times (whether or not open to the public) with respect to those other Facilities providing access to the Hotel Parcel; (ii) at any time to perform Maintenance when such Maintenance is required or permitted under this Agreement; (iii) at any time for pedestrian egress in an Emergency Situation; and (iv) at such times and under such circumstances as may be further agreed to by the Retail Owner.

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

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

(d) **Utility Services.** A non-exclusive easement for Utility Service purposes required by the Hotel Parcel and the Maintenance (but only if and when such Maintenance is required or permitted under this Agreement) of Utility Facilities which service the Hotel Parcel in those areas of the Retail Parcel where such Utility Facilities are currently located or may, pursuant to this Agreement, hereafter be located (including without limitation, access to the basement levels of the building for such purposes). If, at any time, it becomes necessary for the operation of the Hotel Parcel to relocate or add to utility easements (including installation of Utility Facilities) other than where currently located in the Retail Parcel or where they may be located in the future in the Retail Parcel pursuant to this Agreement in order to provide or upgrade required Utility Service to the Hotel Parcel, Retail Owner agrees to grant such additional or relocated utility easements (at such location agreed to by Hotel Owner and Retail Owner), provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Retail Parcel for the purposes for which the Retail Parcel is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, and do not unduly inconvenience the Owner or Occupant(s) of, or cause any business interruption within, the Retail Parcel; (2) such relocation shall not cause any interruption of Utility Services to the Retail Parcel, increase the cost of Utility Services to the Retail Parcel or change any points of connection between such Utility Facilities and the Retail

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Parcel unless the Retail Owner agrees in writing to the aforesaid and the Hotel Owner pays all costs of relocating such connection points; (3) Hotel Owner shall promptly apprise the Retail Owner regarding the new location and provide such Retail Owner at least fifteen (15) days written notice prior to relocating any utility easements and provide the opportunity to allow the Hotel Owner's activities to be accompanied by a representative of the Retail Owner; and (4) Hotel Owner shall pay the reasonable costs and expenses incurred by Retail Owner in connection with granting such easement. Retail Owner may relocate the utility easements granted herein at its sole cost and expense provided that (i) such relocation shall not cause any interruption of Utility Services to any other Parcel, increase the cost of Utility Services to any other Parcel or otherwise adversely affect the Utility Services to any other Parcel, (ii) Retail Owner shall not change any points of connection with the Utility Facilities located on any other Parcel unless Retail Owner pays all costs of relocating such connection points that are incurred by Hotel Owner and (iii) Retail Owner shall promptly apprise Hotel Owner regarding the new location of any easements and provide Hotel Owner at least fifteen (15) business days written notice prior to relocating any utility easements and provide the opportunity to allow the Retail Parcel Owner's activity to be accompanied by a representative of the Hotel Owner.

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

(f) **Encroachments.** An exclusive easement permitting the existence of encroachments of six (6) inches or less if such encroachments result from the construction or permitted renovations of permitted renovations of any of the Hotel Parcel Improvements from what is otherwise depicted on the Project Plans or if, by reason of settlement or shifting of such Improvements, any part of such Improvements, Hotel Owned Facilities encroaches or shall hereafter encroach upon any part of the Retail Parcel. This Easement shall exist only so long as the encroaching portion of such Improvements or Facilities, or replacements do not either materially enlarge the encroachment or materially interfere with the use operation or maintenance of the Retail Parcel or Utility Service for the Retail Parcel. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(g) **Hotel Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Hotel Owned Facilities in the Retail Parcel in their present locations or as otherwise specified in the Project Plans or relocated pursuant to the terms of this Agreement.

(h) **Exterior Lighting and Exterior Hotel Signs.** To and for the benefit of the Hotel Parcel and Hotel Owner, in compliance with applicable Laws, Hotel Owner is

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hereby granted the following easement rights to install, affix, repair, replace and Maintain the Exterior Lighting and Hotel Parcel signs on the Retail Façade in the locations determined by Hotel Owner in its reasonable discretion. The easement rights reserved in the immediately preceding sentence shall be perpetual and exclusive and shall include all necessary easement rights to install, connect and Maintain any and all necessary cables, Pipes, lines, conduits and other Facilities necessary for the supply of power to any Exterior Lighting and signs being installed pursuant to this Section. The foregoing easement rights shall include the right to enter upon the Property, the Building and all components thereof (including, without limitation, the exterior walls of the Building and scaffolding erected adjacent to the Building), to Maintain such Exterior Lighting Facilities and signs, or to modify or change such Exterior Lighting, from time to time, as well as the right to construct scaffolding or other apparatus necessary or appropriate to exercise the foregoing rights. The size, location, type, style, content, appearance and design of the Exterior Lighting and signs contemplated in this Section shall be determined by Hotel Owner in its reasonable discretion; provided, however, that such signs shall, in all respects, (i) comply with the Landmarks Ordinance Requirements, (ii) comply with the Federal Historic Preservation Requirements, (iii) comply with the requirements of this Agreement, (iv) comply with all other applicable Laws, and (v) comply with the Project Quality Standards. Hotel Owner shall Maintain the Exterior Lighting, and signs pursuant to this Section in good condition and repair, shall pay for all utilities consumed in connection therewith and shall comply with all Laws applicable thereto, including obtaining and maintaining all permits and licenses, subject to reimbursement by the other Owners in accordance with **Section 6.1(g)** hereof.

(i) **Rooftop Communications Facilities.** To and for the benefit of the Hotel Owner a non-exclusive easement for the installation, use and Maintenance of Hotel Communications Facilities within the Retail Parcel serving the Hotel Parcel, which are currently available or become available through technological advances, in accordance with the provisions of **Exhibit 2.2(e)**. Hotel Owner's exercise of the foregoing easement rights shall be subject to and in accordance with rules and regulations established by Hotel Owner from time to time regarding, among other things, (i) the qualifications of contractors authorized to install or perform Maintenance of such Hotel Communications Facilities, (ii) procedures to be followed in connection with the installation and Maintenance of such Hotel Communications Facilities in order to ensure that (A) the integrity of the roof is maintained, (B) Hotel Communications Facilities are appropriately affixed to the roof to prevent injury to persons and damage to property, (C) such installation is completed in accordance with the City's Municipal Code, and (D) the appearance of the Building is not adversely affected. Such rules and regulations shall be enforced in a non-discriminatory manner.

(j) **Basement Facilities.** To and for the benefit of the Hotel Parcel and Hotel Owner (and any Utility Company, if required), a non-exclusive easement for the installation, use, and Maintenance of all mechanical and utility Hotel Owned Facilities in the basement levels of the Building on the Retail Parcel which are located in such basement levels as of the Effective Date, and subsequent Hotel Owned Facilities serving

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the same, in such locations as are mutually acceptable to the Hotel Owner and Retail Owner.

ARTICLE 5

INDEMNIFICATION

5.1 **Indemnity by Owners.** Without limiting any other provision hereof, but subject to the provisions of **Section 22.1** hereof, each Owner (hereinafter in this **Section 5.1**, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless each other Owner and such other Owner's partners, beneficiaries, stockholders, members, managers, directors, officers, agents, employees and attorneys and the respective successors and assigns of all such partners and parties and any Mortgagees (hereinafter in this **Section 5.1**, collectively, the "**Indemnitee**") for losses, liabilities, damages, judgments, reasonable costs and expenses including, without limitation, reasonable legal fees incurred by Indemnitee arising out of any claim and any deductibles required to be paid under applicable insurance policies, including any actions or proceedings against Indemnitee by or on behalf of any person, firm, corporation or governmental authority, other than any Indemnitee, arising out of (i) the Indemnifying Owner's or its Permittees' use, possession, Maintenance, or operation of the Indemnifying Owner's portion of the Property or the Indemnifying Owner's Owned Facilities, or activities therein, (ii) the Indemnifying Owner's use, exercise or enjoyment of an Easement or Facility (shared or otherwise) or (iii) the Indemnifying Owner's failure to perform its Maintenance or other obligations hereunder. In no event shall the Indemnifying Owner have any indemnification obligation to the Indemnitee (a) to the extent occasioned by the negligent or wrongful acts or omissions of any Indemnitee or its Permittees, or (b) for any casualty loss to property to the extent of any insurance proceeds available or which should be available under any insurance policy required to be carried by the Indemnitee or (c) any loss or damage that is or should be insured under the Indemnitee's insurance obligations contained in this Declaration. The indemnification obligations of the Indemnifying Owner hereunder shall not include or be deemed to extend to the Permittees of the Indemnitee. If any action or proceeding is brought against any Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from such Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be deemed to be reasonably satisfactory to such Indemnitee. The Indemnitee shall cooperate with the Indemnifying Owner in the defense of such matter, at the Indemnifying Owner's expense. Except as may be required under any insurance policy, the Indemnitee shall not enter into any agreement or settlement with respect to such matters while the Indemnifying Owner is defending or contesting such actions, without the Indemnifying Owner's prior written approval, which approval shall not be unreasonably withheld. Any such agreement or settlement without the Indemnifying Owner's approval shall release the Indemnifying Owner from its obligation to indemnify the Indemnitee with respect to such matter. In the event of a final and non-appealable determination of any Indemnitee's negligence or wrongful acts, the Indemnifying Owner shall be entitled to receive indemnification and repayment for all actual out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) associated with defending an action resulting from an Indemnitee's negligence or wrongful acts or otherwise paid to the Indemnitee. Notwithstanding anything to the contrary contained in this

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Article 5, in no event shall any Mortgagee have any obligation as an Indemnifying Owner hereunder unless at the time of the occurrence of the event giving rise to the indemnification obligation such Mortgagee was a mortgagee-in-possession of the Parcel previously owned by such Mortgagee's borrower and such Mortgagee was then acting in the capacity as the Owner of such Parcel.

ARTICLE 6

SERVICES PROVIDED BETWEEN OWNERS

6.1 **Services to Retail Owner by Hotel Owner; Retail Owner Responsibilities.**
From and after the substantial completion of the Hotel Parcel Improvements unless otherwise indicated, Hotel Owner shall furnish or cause to be furnished the following services to Retail Owner:

(a) **Wastewater/Sanitary Sewer.** Maintenance of shared Facilities providing sanitary sewer drainage, upon the terms and conditions set forth in **Exhibit 6.1(a)**, which sets forth in addition the responsibility of Owners for other Facilities.

(b) **Stormwater Drainage Facilities.** Maintenance of shared Facilities providing stormwater drainage, upon the terms and conditions set forth in **Exhibit 6.1(b)**, which sets forth in addition the responsibility of Owners for other Facilities.

(c) **Fire Pump, Combination Standpipe and Life-Safety Monitoring System.** Maintenance of shared Facilities providing the fire pump, combination standpipe and life-safety system, upon the terms and conditions set forth in **Exhibit 6.1(c)**, which sets forth in addition the responsibility of Owners for other Facilities.

(d) **[Intentionally Omitted.]**

(e) **[Intentionally Omitted.]**

(f) **Loading Facilities.** Hotel Owner shall cause to be provided trash removal service and shall be responsible for Maintenance of the Loading Facilities (as defined in **Section 2.2(d)** hereof), upon the terms and conditions set forth in **Exhibit 6.1(f)**.

(g) **Exterior Lighting and Signs.** Provision of electricity to and Maintenance of the Hotel Owner Exterior Lighting and signs located on the Façade, upon the terms and conditions set forth in **Exhibit 6.1(g)**, which in addition sets forth the responsibility of Retail Owner for any other permitted signs on the Retail Parcel.

(h) **[Intentionally Omitted].**

(i) **Maintenance of Sidewalks and Snow Removal.** Subject to the legal obligations and rights of the City, Maintenance of all sidewalks along LaSalle Street and

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Madison Street, adjacent to the Building (collectively, the "Sidewalks") and snow removal from such Sidewalks upon the terms and conditions set forth in Exhibit 6.1(i) provided that any Owner which authorizes outdoor sidewalk café seating adjacent to its Parcel shall be responsible for timely cleaning of the same at its sole expense.

(j) **Façade and Exterior Window Maintenance.** Exterior window washing and Maintenance of the Hotel Parcel Façade and exterior windows on the Hotel Parcel upon the terms and conditions set forth in Exhibit 6.1(j), which in addition sets forth the responsibility of Retail Owner for the maintenance of the Façade and exterior windows on the Retail Parcel.

(k) **Shared Freight Elevator.** Provision of elevator service and Maintenance of the Shared Freight Elevator, upon the terms and conditions set forth in Exhibit 6.1(k-1), which includes certain Retail Owner reimbursement obligations.

(l) **Roof Maintenance.** Maintenance of the roof of the Building, upon the terms and conditions set forth in Exhibit 6.2(a)(ii), which in addition sets forth the responsibility of Owners for other Facilities.

(m) **Domestic (City) Water.** Maintenance of Shared Facilities, if any, in accordance with the Project Plans, providing delivery of domestic (City) water, upon the terms and conditions set forth in Exhibit 6.2(b)(i), which in addition sets forth the responsibility of Owners for other Facilities.

(n) **Chilled Water.** Maintenance of shared Facilities providing chilled water, upon the terms and conditions set forth in Exhibit 6.2(b)(ii), which in addition sets forth the responsibility of Owners for other Facilities.

(o) **[Intentionally Omitted.]**

(p) **Hot Water System.** Maintenance of shared steam system upon the terms and conditions set forth in Exhibit 6.2(b)(iv), which in addition sets forth the responsibility of Owners for other Facilities.

(q) **Natural Gas, Electrical and Telephone/Cable/Data Systems Maintenance.** Maintenance of shared Facilities which provide natural gas, electrical and telephone/cable/data services upon the terms and conditions set forth in Exhibit 6.1(q).

Notwithstanding the above, the Retail Owner may, at its sole cost and expense, supplement the services then being provided by Hotel Owner; provided, however, that any such supplementing of services by the Retail Owner (as applicable) shall be (i) performed in a manner so as not to unreasonably interfere with the services being provided by Hotel Owner and (ii) provided at the sole expense of the Retail Owner (as applicable), and the provision of any such supplemental services which involve any Alterations shall be subject to the provisions of Article 15 hereof.

The Owners acknowledge and agree that:

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(i) each Owner shall be responsible at its sole expense for installing and performing Maintenance of any desired emergency generator facilities for providing emergency electricity, insofar as no emergency generator will be installed or maintained for the Building as a component of Utility Facilities;

(ii) each Owner shall (A) be responsible for washing the exterior and interior face of exterior windows upon the terms and conditions set forth in Section 6.1(i) and in compliance with Law and (B) shall be responsible for Façade and Window Maintenance upon the terms and conditions set forth in Exhibit 6.1(j). Retail Owner shall in no event place scaffolding or other apparatus to perform window washing work that would block, obscure or obstruct the street entry level to the Hotel Parcel; and

(iii) unless the Owners agree in writing to enter into a joint contract with an exterminator services company, each Owner shall obtain and maintain in effect at all times its own pest control services to regularly exterminate its own Parcel for all pests in compliance with Laws and with the terms of this Agreement.

6.2 Additional Retail Owner Responsibilities. In addition to the terms of Exhibits 6.1(a), 6.1(b), 6.1(c), 6.1(f), 6.1(g), 6.1(i), 6.1(j), 6.1(k-1), 6.1(q), 6.2(a)(ii), 6.2(b)(i), 6.2(b)(ii), and 6.2(b)(iv), cited above in Section 6.1, Retail Owner is responsible for maintenance of the Exclusive Retail Parcel Elevator on the terms set forth in Section 2.2(i)(iv) and for certain maintenance and City permit costs related to City vaults adjacent to the Retail Parcel utilized by Retail Owner on the terms and conditions set forth in Section 10.1(c)(viii) and (ix). Retail Owner shall use good faith efforts to attempt to furnish or cause to be furnished other services to Hotel Owner reasonably required or requested by Hotel Owner for normal business operations of the Hotel Parcel provided and on the condition that agreement is first reached on the terms and conditions mutually acceptable to the Owners for providing such other services, provided that each party agrees not to unreasonably withhold its consent to such terms and conditions. Once determined, the Owners may amend this Agreement to incorporate the terms and conditions agreed to by such Owners regarding these services.

6.3 Obligation to Furnish Services. The Owners responsible for furnishing services hereunder shall furnish all services required under this Article 6 in a manner consistent with the Project Quality Standards. Each Owner shall use reasonable diligence in performing the services required as set forth in this Article 6 but shall only be liable under this Article 6 for interruption or inadequacy of service and loss or damage to property or business (including any consequential damages) arising out of such interruption or inadequacy if such interruption or inadequacy results from its gross negligence or willful misconduct in performing such services. Each Owner reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation.

6.4 Payment for Services. Payment for services rendered pursuant to this Article 6 and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of Exhibit 6.6 attached hereto and made a

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part hereof. Notwithstanding the foregoing, in the event that a shared Utility Facility must be upgraded to accommodate the increased capacity needs of any Owner, such Owner shall pay the full costs of such upgrade.

6.5 Failure to Perform Services.

(a) If an Owner shall fail to perform as required by the terms and conditions of this **Article 6** and such failure shall continue for a period of twenty one (21) days after receipt of written notice thereof to the Defaulting Owner from the Creditor Owner, the Creditor Owner shall have the right to perform the same (without limiting any other rights or remedies of such Owner) until such time as the Defaulting Owner cures its failure to perform, provided, however, that the Creditor Owner must delay its commencement of such self-help performance if the Defaulting Owner has commenced good faith efforts to cure a failure to perform which is of a nature that requires a reasonable period of time to cure and the Defaulting Owner is diligently pursuing such cure. Notwithstanding the foregoing, if an Owner fails to perform the services it is required to provide in this **Article 6** in an Emergency Situation, the Creditor Owner shall have the right to perform such services immediately after providing the Creditor Owner reasonable advance written notice is practicable under the circumstances until such time as the Owner responsible for providing such services provides the same.

(b) If a dispute exists as to whether an Owner has failed to perform, then except in the case of an Emergency Situation such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under **Article 12** if not resolved within ten (10) days after the dispute arises. Notwithstanding anything contained herein to the contrary, except in Emergency Situations Creditor Owner may not commence self-help performance under **Section 6.5(a)** above until the dispute is submitted to arbitration under **Article 12** as an Arbitrable Dispute and the arbitrator issues a final award or decision.

6.6 **Data Unavailable from Metering.** Where the allocation of the cost of a service under this **Article 6** is based on usage recorded by meters, and if at any time the actual allocation of cost of service based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the Owner performing such service shall in good faith make such reasonable determination of costs based on historical data and usage, using such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the other Owner in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a Projection Notice or Statement (as such terms are defined in **Exhibit 6.6**) or statement of Net Capitalized Cost of Replacement under **Exhibit 6.6** relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the Hotel Owner and the Retail Owner for such period; provided further, however, if the Owner receiving such notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. If the Owners fail to agree concerning the method of

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estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then either Owner may submit the question to the Architect or other expert agreed to by the Hotel Owner and the Retail Owner for its advice. The Architect or other expert agreed to by the parties shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect or other expert.

ARTICLE 7

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

7.1 Liens.

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

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

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

(ii) shall deliver to the Impacted Owner either: (A) cash or a surety bond from a responsible surety company reasonably acceptable to the Impacted Owner(s) in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (B) other security or indemnity reasonably acceptable to each Impacted Owner's title insurance company and the Impacted Owner. An endorsement by each Impacted Owner's title insurance company over such lien claim to each Impacted Owner's title insurance policy shall be deemed an indemnity reasonably acceptable to the Impacted Owner, and shall satisfy the requirements of clause (B) above.

(c) In any event, a Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure on the Parcel or Owned Facilities of the

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Impacted Owner. If the Liening Owner fails to comply with the foregoing provisions of this **Section 7.1**, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees and litigation expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under this **Section 7.1**.

(d) Any Owner performing any work required or provided for under this Agreement shall ensure that its construction contracts include a provision (i) acknowledging the separate ownership of the Parcels or (ii) waiving the right to file a lien or claim against a Parcel other than the Parcel or Parcels with respect to which the work was done, all in accordance with **Section 14.4** of this Agreement.

7.2 **Compliance With Laws.**

(a) Each Owner, its respective Parcels and Improvements (including any and all exterior signage on any portion of the Property) shall comply at all times with all applicable Laws, including any obligation to maintain vault or sidewalk permits or licenses, public way permits, or other permits or licenses. Notwithstanding the foregoing, (i) Hotel Owner shall be responsible for, and shall at all times maintain at its sole cost and expense, any and all permits or licenses for use of the sidewalk on the street level immediately adjacent to the Hotel Parcel for any outdoor cafe or similar operation taking place by or through Hotel Owner; and (ii) Retail Owner shall be responsible for, and shall at all times maintain at its sole cost and expense, any and all permits or licenses for use of the sidewalk on the street level immediately adjacent to the Retail Parcel for an outdoor café or similar retail operation taking place by or through Retail Owner.

(b) Each Owner shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property, or any portion thereof, or the requirements of any insurance coverage on any other Owner's portion of the Property if noncompliance by it with respect to its respective portion of the Property or any portion thereof would:

(i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by or on behalf of all Owners (unless the non-complying Owner pays all such increases), or

(ii) render any other Owner's portion of the Property uninsurable, or

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(iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring any other Owner's portion of the Property.

(c) Each Owner shall deliver to the other Owners, within ten (10) business days after receipt, a copy of any written report, citation or notice affecting or relating to compliance of the Property with Laws to the extent such report, citation or notice will have an impact on any other Owner's Parcel.

7.3 **Use.** The Hotel Parcel shall be used only for lawful uses, including, without limitation, as a first-class, select service branded hotel or better, with features that may include without limitation taverns, restaurants, ballroom facilities, meeting room and conference facilities, catering, fitness center, spa, hotel offices, and back of house space, and for uses accessory thereto, which shall be maintained in a first-class manner and shall be at all times consistent with uses within other first class hotel and restaurant projects in the City. The Retail Parcel shall be used only for lawful first class retail, retail service and commercial uses (including tavern, restaurant and other food service uses) and other lawful uses. In any event, notwithstanding anything contained herein to the contrary the use of each Parcel shall, at all times, (a) be consistent with the Project Quality Standards; and (b) not include any of the Prohibited Uses set forth on **Exhibit 7.3(b)** attached hereto and made part hereof.

7.4 **Exterior Signage; Visible Window Treatments.**

(a) The only permitted signage serving the Retail Parcel shall be signage that complies with the size, location type, style, content, appearance and design requirements of the signage provisions of this Section and complies with **Exhibit 7.4(a)** attached hereto and made part hereof ("**Retail Parcel Signage Regulations**") and, in addition, shall be consistent with the Project Quality Standards, provided that no flashing or neon signs are permitted and such signage shall at all times comply with the requirements of this Agreement and all applicable Laws, including without limitation the Federal Historic Preservation Requirements and the Landmark Ordinance Requirements. Retail Owner, at its sole cost and expense, shall maintain the signage allowed by this Section in good condition and repair, shall pay for all utilities consumed in connection therewith and shall comply with all Laws applicable thereto, including obtaining and maintaining all permits and licenses. Hotel Owner may temporarily remove the signage during any period it is Maintaining the Hotel Facade, all in accordance with the terms and conditions of this Agreement; provided, however, that the Hotel Owner shall: (1) not be permitted to remove such signage unless such removal is necessary in order to perform Maintenance; (2) provide prior written notice of such removal to Retail Owner; (3) use reasonable efforts not to disturb such signage during any such Maintenance, (4) use reasonable efforts to limit the duration of such disruption to the shortest practicable period of time; (5) promptly reattach such signage upon completion of any such work; and (6) repair any damage suffered by such signage (and, to the extent necessary, replace such signage) as a result of any such Maintenance at its sole cost and expense upon completion of any such Maintenance. The foregoing signage rights shall not be deemed to include a right for Retail Owner to drill or bore

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into any portion of the Hotel Façade or any other Hotel Parcel Improvements for purposes of connecting electrical service or conduits to such signage. Retail Owner or its Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use such signs pursuant to this Section 7.4(a).

(b) Hotel Owner may install and Maintain signs on the Hotel Parcel Façade provided that such signage is (i) consistent with the Project Quality Standards, (ii) not made with paper and does not include either flashing lights or neon and (iii) in compliance with all applicable Laws. Hotel Owner or its Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use such signs pursuant to this Section 7.4(b).

(c) Each Owner shall maintain all ground floor display windows (*i.e.*, windows facing public right-of-way) in a neat, attractive condition and shall keep all display windows and exterior electric signs lighted from dusk until 10:00 p.m. every day, including Sundays and holidays.

(d) In addition to the foregoing, any and all signage permitted by this Section 7.4 must also comply with the following requirements (the "Signage Criteria"):

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

7.5 Environmental and Engineering Review. Each Owner ("Inspecting Owner") shall have the right in certain instances listed below to obtain from an environmental engineer or an inspecting architect or engineer of the Inspecting Owner's choice and at the Inspecting Owners' own cost and expense, an audit, review, assessment or report (each referred to as a "Review") relating to any or all of the Project, which Review may include tests or inspections of the other Owners' Parcels, as part of such Review. The Inspecting Owner shall use reasonable efforts to minimize the disruption of the other Owners' operation of business or use in their Parcels and shall repair any damage to property of the other Owners caused by a Review. The instances when an Owner may obtain a Review necessitating tests or inspections of the other Owners' Parcels are:

- (a) if the Inspecting Owner has entered into or will enter into a contract to sell, lease, finance or refinance its Parcel (or any direct or indirect interest therein) in which a requirement of said contract is a Review; or
- (b) if the Inspecting Owner's then current or proposed Mortgagee has requested a Review; or

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(c) if a Review is required by Laws; or

(d) if the Inspecting Owner, in good faith, believes that another Owner may have breached the provisions of Section 7.2 as it relates to the matters which could be disclosed by a Review or that the Inspecting Owner may be adversely affected or subject to liability, as a result of matters which could be disclosed by a Review; or

(e) in connection with a Mandatory Façade Inspection (as defined in Section 10.1(a)(ii)(B)).

7.6 **Rules and Regulations.** In addition to the foregoing, each Owner shall abide by all uniform reasonable rules and regulations adopted and issued by Hotel Owner from time to time (the "**Rules and Regulations**") pertaining to the operation and management of the Property which shall be enforced by Hotel Owner in a non-discriminatory manner. If any rules and regulations are contrary to the terms of this Agreement, the terms of this Agreement shall prevail. Present rules are attached hereto as **Exhibit D** and made part hereof. The Hotel Owner shall not be responsible to Retail Owner for violation of Rules and Regulations or terms of this Agreement by another Occupant nor Hotel Owner's failure to enforce the same nor shall failure to obey the same by others or lack of enforcement relieve Retail Owner from its obligations to comply therewith.

ARTICLE 8

REAL ESTATE TAXES AND SPECIAL ASSESSMENTS

8.1 **Tax Division.** As of the date of this Declaration, the recent tax division petition status of the Property is as follows: (i) a tax year 2014 tax division petition previously filed by the Declarant has, pursuant to an October 1, 2015 Division Report issued by the Cook County Assessor, divided the Retail Parcel for real estate tax purposes into three separate permanent index numbers for tax purposes: a one-story "Retail Parcel 1" on the ground level at the southeast corner of LaSalle and Madison (Permanent Index Number 17-16-204-035-0000); a basement level "Retail Parcel 1A" below some, but not all, of "Retail Parcel 1" (Permanent Index Number 17-16-204-036-0000), and a "Retail Parcel 2" on the ground level to the east of "Retail Parcel 1" (Permanent Index Number 17-16-204-037-0000), and (ii) the same 2014 tax division petition previously filed by the Declarant and the same October 1, 2015 Division Report Issued by the Cook County Assessor divided the Hotel Parcel for real estate tax purposes into two separate permanent tax index numbers, "Hotel Parcel 1" (Permanent Tax Index Number 17-16-204-038-0000) and "Hotel Parcel 2" (Permanent Index Number 17-16-204-039-0000). The aforesaid tax division is to be reflected for the first time in the second installment 2015 tax bills issued in the fall of 2015 although new replacement Permanent Index Numbers for Retail Parcel 2 and Hotel Parcel 2 may be reflected in the second installment 2016 tax bills issued in 2017. The Cook County Assessor has approved a subsequent tax division petition to reflect a minor as built adjustment between PIN 17-16-038-0000 and PIN 17-42-204-039-0000, replacing PIN 17-16-204-038-0000 with PIN 17-16-204-042-0000 and replacing PIN 17-16-204-039-0000 with PIN 17-16-204-043-0000.

8.2 **Payment of Real Estate Taxes.** Each Owner shall be responsible for timely payment of Real Estate Taxes and Special Assessments respecting its Parcel.

8.3 **Reference to Taxes in Leases or Contracts.** For purposes of this Agreement and any documents or instruments, such as leases for space in any of the Parcels referring to the

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allocation of Real Estate Taxes and Special Assessments pursuant to this Agreement, the Real Estate Taxes and Special Assessments allocated to a portion of the Building shall mean those taxes assessed and payable with respect to such portion of the Building, as provided in this Article 8.

ARTICLE 9

INSURANCE

9.1 **Project Insurance.** Commencing on the Effective Date, Hotel Owner shall procure or cause to be procured, on behalf of all Owners and the entire Project, and shall at all times thereafter maintain or cause to be maintained all of the insurance (collectively, the "**Project Insurance**") described in this **Section 9.1(a), (b) and (c)**. In connection therewith, (a) Retail Owner hereby authorizes and assigns to Hotel Owner the right to so obtain such Project Insurance, and (b) Hotel Owner hereby assumes the obligation to so obtain such Project Insurance.

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

(i) So called "All Risk" or Special Perils Form insurance as exists on the Effective Date covering the Core and Shell of the Building, including coverage against loss or damage by fire, collapse, lightning, tornado, hail, vandalism and malicious mischief, theft, sprinkler leakage, water damage, back-up of sewers and drains, bursting water mains, and against loss or damage by such other, further and additional risks as now embraced by the Special Perils forms, in each case (A) in an amount equal to 100% of their "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, land, foundations and footings); (B) containing an agreed amount endorsement with respect to the Core and Shell waiving all co-insurance provisions; (C) containing an endorsement that all covered losses will be paid on a replacement cost basis, which shall mean the actual cost to repair or replace the damaged property without deduction for depreciation; (D) providing for a deductible which is available and reasonable for such insurance, taking into account the intended mixed uses of the Project, and (E) including coverage in reasonable amounts and commercially available sub limits for terrorist acts (a separate policy covering acts of terrorists shall be required if coverage is not provided as part of the "All Risk" coverage required here-in), flood, earthquake, windstorm, other sudden and abnormal earth movement, debris removal and demolition of the undamaged portion of the Core and Shell and increased cost of construction due to the enforcement of laws regulating reconstruction. The Full Replacement Cost shall be ascertained upon the Effective Date and thereafter from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of any Owner or Mortgagee by a qualified appraiser or contractor selected by Hotel Owner with the cost of such appraisal paid by the Owners based on the Approved Division. After the first such appraisal following completion of construction of the Project, additional appraisals may be based on construction cost indices customarily employed in the appraisal profession or as accepted by the insurance company.

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

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

(c) **Public Liability Insurance for Core and Shell (Including Without Limitation Entrances, Exits, Lobbies, Hallways, Stairwells Which Are Shared by the Owners and Public Right-of-Way and Private Easements Adjacent to the Parcels).** Hotel Owner shall insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury, or property damage occurring in, on, under, within, upon or about the following improvements that are shared by the Owners: entrances, exits, lobbies, hallways, stairwells and public right-of-way and private easements adjacent to the Parcels, or as a result of operations within the aforesaid (including contractual liability covering obligations created by this Agreement, including, but not limited to, indemnity obligations contained herein, if any), in all events for limits, of not less than combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for personal and bodily injury or property damage and with an amount of not less than \$25,000,000 of umbrella coverage.

Each policy described in this **Section 9.1(c)** hereof:

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

(ii) shall provide coverage on an occurrence basis, rather than a claims made basis; and

(iii) may be maintained in whole or part in the form of a blanket policy covering other locations provided that such insurance substantially complies in all respects with the provisions of **Section 9.2**.

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(d) **Additional Insurance Requirements.** Each Owner shall also procure any other or additional insurance reasonably required by the Hotel Owner or required by each Owner's Mortgagee not otherwise provided, provided that either the Owner who requires the same or the Owner whose Mortgagee requires such other or additional insurance shall bear one hundred percent (100%) of the cost of such insurance.

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

(i) The costs of such Project Insurance coverage and the cost benefits and cost burdens of retentions shall be allocated between the Owners by the Hotel Owner, based upon the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

(ii) Hotel Owner shall provide written notice to the Retail Owner of the amount of the Project Insurance premium owed by the Retail Owner, calculated pursuant to **Section 9.1(e)(i)** above, which notice shall include written evidence of the cost of such premium. Within fifteen (15) days after receipt of such notice, the Retail Owner shall deliver to Hotel Owner a check made payable to the insurance carrier (or if the insurance is pre-paid, then to the entity that paid for the insurance) providing such Project Insurance (the "**Project Insurance Carrier**") for its respective allocable share of such Project Insurance premium. If applicable, Hotel Owner shall forward such checks, together with payment of Hotel Owner's allocable share of such Project Insurance premium, to the Project Insurance Carrier and shall forward a copy of the paid receipt to the other Owners when received.

(f) **Certificate of Insurance.** Upon request and annually at renewals, certificates of insurance or coverage summaries afforded and evidencing renewal shall be delivered to the Owners and their respective Mortgagees, provided that if the holder of the Existing Mortgage has the right to require copies of insurance policies, Declarant shall comply.

(g) **Insurance Provisions** Each policy described in **Section 9.1(a) and (b)** hereof:

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

(ii) shall insure as "additional insureds" each of the Owners as their interest may appear and, as "mortgagees", their respective Mortgagees who have provided notice to Owners pursuant to **Section 21.11(b)**, below;

(iii) shall provide, by endorsement or otherwise, that the insureds shall have the right under the policy to waive in writing prior to a loss any or all rights of recovery against any party, for loss occurring to the property insured

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

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

(v) shall include a standard mortgagee endorsement; and

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

(h) Notwithstanding anything set forth herein to the contrary, the Owners acknowledge that the existing property insurance policy obtained by Declarant for the Property (the "Existing Policy") through a blanket program (collectively, the "Existing Insurer"), which Existing Policy has been reviewed and approved by the Owners and their respective Mortgagees, shall remain in place from the Effective Date and shall be deemed to satisfy all of the Project Insurance requirements set forth in this Section 9.1, subject to the following:

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

(ii) Upon the issuance of an Owner's individual property insurance policy in accordance with Sections 9.2(a) and 9.2(f)(iv) hereof, the coverage provided for Core and Shell under the Existing Policy shall be modified to:

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

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

The Existing Policy, as modified under the aforesaid clause (B) shall comply with all of the terms of Section 9.1(a) through (d) hereof.

9.2 Insurance to be Obtained by Individual Owners.

(a) Property Insurance. Commencing upon the date of Retail Owner's acquisition of title to the Retail Parcel, each Owner shall procure on behalf of such Owner's (i) Improvements and Owned Facilities (but excluding all such Improvements and Owned Facilities which are covered by the Core and Shell Property Insurance

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referenced in Section 9.1(a) and (b), (ii) personal property located in the Building (collectively, the "Owner Insured Property"), and (iii) business interruption or loss of rents, and shall at all times thereafter maintain, so called "All Risk" or Special Perils Form insurance as exists on the Effective Date covering such Owner Insured Property, including coverage against loss or damage by fire, collapse, lightning, tornado, hail, vandalism and malicious mischief, theft, sprinkler leakage, water damage, back-up of sewers and drains, bursting water mains, terrorism (a separate policy covering acts of terrorists shall be required if coverage is not provided as part of the "All Risk" coverage required here-in), and against loss or damage by such other, further and additional risks as now embraced by the Special Perils forms, in each case (A) in an amount equal to 100% of their "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, land, foundations and footings); (B) containing an agreed amount endorsement with respect to such Owner Insured Property waiving all co-insurance provisions; (C) containing an endorsement that all covered losses will be paid on a replacement cost basis, which shall mean the actual cost to repair or replace the improvements without deduction for depreciation; (D) providing for a deductible which is available and reasonable for such insurance and (E) including coverage in reasonable amounts and commercially available sub limits for terrorist acts, flood, earthquake, windstorm, other sudden and abnormal earth movement, debris removal and demolition of the undamaged portion of the Owner Insured Property and increased cost of construction due to the enforcement of laws regulating reconstruction.

(b) **Public Liability Insurance.** Each Owner shall insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury, or property damage occurring in, on, under, within, upon or about each Owner's respective Parcel (but excluding all such areas which are covered by the insurance referenced in Section 9.1(c) above), or as a result of operations on such Owner's Parcel (including contractual liability covering obligations created by this Agreement, including, but not limited to, indemnity obligations contained herein, if any), in all events for limits, of not less than combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for personal and bodily injury or property damage and with an amount of not less than \$25,000,000 of umbrella coverage.

(c) **Insurance Provisions.** Each policy described in Section 9.2 hereof:

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

(ii) each Owner's property insurance shall insure the Owner's respective Mortgagee as a "mortgagee on real property or loss payee on

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business interruption”, as their interest may appear, as may be required under such Mortgagee’s loan documents

(iii) [Intentionally Omitted.]

(iv) the property insurance shall provide that all losses payable shall be paid as their interest may appear;

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

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

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

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

(ix) may be maintained in whole or part in the form of a blanket policy covering other locations provided that such insurance substantially complies in all respects with the provisions of this **Section 9.2**; and

(x) the liability insurance shall name Hotel Manager as an additional insured and shall be primary and non-contributory to any coverages Hotel Manager may carry.

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

(e) Upon written request, certificates of insurance evidencing the coverages outlined in **Section 9.2** or binders with summaries of coverages and renewals thereof afforded and evidencing the insurance required shall be delivered to the other Owners and their respective Mortgagees, provided that if the holder of the Existing Mortgage has the right to require copies of insurance policies, Declarant shall comply.

(f) Notwithstanding anything set forth herein to the contrary, the Owners acknowledge that the Existing Policy shall remain in effect from the Effective Date and shall be deemed to satisfy all of the property insurance requirements set forth in **Section 9.2(a)** hereof, subject to the following:

(i) The Existing Policy shall be updated in accordance with **Section 9.1(h)** hereof;

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

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

(iv) Immediately upon the issuance by the City of a certificate of occupancy for an Owner's Parcel, such Owner shall obtain its own property insurance policy for its Owner Insured Property in accordance with Section 9.2(a) hereof, whereupon the coverage provided for Core and Shell under the Existing Policy shall be modified as provided in Section 9.1(h)(ii) hereof.

9.3 **Insurance Companies.** Insurance policies required by this Article 9 hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, and for any primary insurers who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-IX according to AM Best's Insurance Reports (or such greater ratings as may be required by any Mortgagee) or a substantially equivalent rating from a nationally-recognized insurance rating service.

9.4 **Limits of Liability.** Insurance specified in Section 9.1 hereof shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually, or upon the request of any Mortgagee, to determine if such limits and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be covered and the financial responsibility of the insurers, and to determine whether such limits and types of insurance comply with the requirements of all applicable statutes, Laws, ordinances, codes, rules, regulations, or orders and whether, on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. The limits of the Project Insurance shall be increased or decreased, if justified, based upon said review, and, upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided, that no agreement regarding a decrease in limits of liability or elimination of any types of coverages required by this Agreement shall be

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effective without the written consent of (a) each of the Owners, whose consent shall not be unreasonably withheld and (b) each Owner's Mortgagees. With the consent of each of the Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be at the expense of the Owner requesting the consultant.

9.5 **Renewal Policies.** Certificates of insurance policies for the coverages outlined in **Section 9.1** hereof or binders with summaries of coverages afforded and evidencing renewal shall be delivered to the Owners and their respective Mortgagees prior to the expiration date of any such expiring insurance policy. Should Hotel Owner fail to provide and maintain any policy of insurance required under **Section 9.1** hereof or should any Owner fail to pay its share of the premiums or other costs for any joint policies, then another Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after written demand therefor from any Creditor Owner.

9.6 **Waiver.** Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Agreement, each Owner hereby waives all claims for recovery from the other Owners for any loss or damage to any of its Property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies; provided any deductible amounts shall be borne by the Owner whose act or omission caused the event out of which the claim arose.

ARTICLE 10

MAINTENANCE AND REPAIR; DAMAGE

10.1 **Maintenance of Improvements; Restoration.**

(a) **Obligation to Maintain.**

(i) Except as expressly provided in **Article 6** hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Parcels, or hereinafter in this **Article 10**, each Owner shall, at its respective sole cost and expense, maintain and keep its respective Parcel, Improvements and Owned Facilities in good order and condition, consistent with the Project Quality Standards, and shall undertake all Maintenance of, in, on, under, within, upon and about such Parcel, Improvements and Owned Facilities, whether said Maintenance is to the interior or exterior thereof or structural or non-structural components thereof, or involve ordinary or extraordinary Maintenance, necessary to keep the same in first class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Each Owner

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further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its respective Parcels, Improvements or Owned Facilities. In the event that any Law or any governmental or quasi-governmental agency requires Maintenance and if any Owner fails to perform any such required Maintenance, and another Owner exercises its self-help rights pursuant to **Section 11.9** below to perform such Maintenance, the performing Owner shall be entitled to receive from such non-performing Owner a ten percent (10%) surcharge on the cost incurred by such performing Owner of the Maintenance necessary to comply with any such Law or requirement of any such governmental or quasi-governmental authority.

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

(A) Each Owner shall, from time to time as reasonably necessary to comply with the Project Quality Standards, cause to be cleaned such Owner's respective portion of the Façade at such Owner's sole expense.

(B) Reference is made to the requirement under the City's Municipal Code, whereby (1) the façade of certain buildings (including the Building) must be inspected (the "**Mandatory Façade Inspection**") by a licensed structural engineer or architect to determine the structural integrity of such façade, and (2) a report (the "**Façade Report**") must be prepared by such inspecting engineer or architect (as applicable) and submitted to the City. Notwithstanding anything set forth in this Agreement to the contrary, the completion of the Mandatory Façade Inspection and Façade Report shall be the sole responsibility of Hotel Owner for the benefit of both the Hotel Owner and the Retail Owner. Hotel Owner shall pay all costs and filing fees in connection with such Mandatory Façade Inspection and Façade Report and the filing of such Façade Report with the City with Hotel Owner's costs and filing fees in connection with such Mandatory Façade Inspection and Façade Report to be allocated to the Retail Owner in accordance with the Approved Division. Within fifteen (15) days after receipt from Hotel Owner of the invoices for such costs and filing fees, together with proof of payment thereof, Retail Owner shall deliver to Hotel Owner a check made payable to Hotel Owner for its respective allocable share of such costs and filing fees in accordance with the Approved Division. Any necessary Maintenance of the Façade of the Retail Parcel and the cost thereof shall remain the sole responsibility of the Retail Owner at its sole expense; any necessary Maintenance of the Façade of the Hotel Parcel and the cost thereof shall remain the sole responsibility of the Hotel Owner at its sole expense, provided, that in the event the necessary Maintenance relates to the same or similar conditions, the Hotel Owner and Retail Owner shall consult to determine if the same contractor can be retained jointly to conduct the Maintenance on both the Retail Parcel and the Hotel Parcel

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with the costs to be allocated between the Hotel Owner and the Retail Owner in an equitable manner given the nature of the necessary Façade Maintenance on each respective Parcel.

(b) **Maintenance Of Hotel Parcel by Hotel Owner.** Hotel Owner shall be responsible for the following relating to the Hotel Parcel:

- (i) Hotel Façade Maintenance;
- (ii) Elevator Maintenance for elevators located on the Hotel Parcel, excluding the Exclusive Retail Parcel Elevator;
- (iii) Window washing;
- (iv) Subject to the legal obligations and rights of the City, snow removal and cleaning;
- (v) Property management for the Hotel Parcel;
- (vi) Security for the Hotel Parcel;
- (vii) Subject to the legal obligations and rights of the City, Maintenance of all vaults which Hotel Owner has the sole right to use, occupy and provide a right of occupancy to third party Occupants by means of agreements between the City and Hotel Owner;
- (viii) Maintenance of City permits to use City vaults described above in **Section 10.1(b)(vii)** and all City license fees in connection with such permits;
- (ix) Permits and permit fees for canopies, awnings and encroachments from the Hotel Parcel into public right-of-way; and
- (x) Maintenance of sprinkler Facilities and emergency lighting.

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

- (i) Window washing of interior and exterior windows;
- (ii) Property management (if applicable);
- (iii) Security for the Retail Parcel;
- (iv) Maintenance of sprinkler Facilities and emergency lighting;
- (v) Permits and permit fees for canopies, awnings and encroachments from the Retail Parcel into public right-of-way;

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(vi) Retail Façade Maintenance;

(vii) Maintenance of the Exclusive Retail Parcel Elevator;

(viii) Subject to the legal obligations and rights of the City, Maintenance of all vaults which Retail Owner has the sole right to use, occupy and provide a right of access to third party occupants by means of agreements between the City and Retail Owner; and

(ix) Maintenance of City permits to use City vaults described in Section 10.1(c)(viii), above and all City license fees in connection with such permits.

10.2 Damage to Core and Shell.

a) Project Insurance Claim.

(i) Any loss covered by the Project Insurance as required under Section 9.1 hereof shall be adjusted by the Hotel Owner, in Hotel's Owner's sole discretion, provided, however, in the event of any loss to the Core and Shell in excess of \$10,000,000, then such loss shall be adjusted by Hotel Owner, subject to reasonable input from the following (collectively, the "Interested Parties"): (A) the Owners whose portion of the Core and Shell is materially affected by such loss, and (B) such Owners' respective Mortgagees (to the extent required under such Mortgagees' respective loan documents).

(ii) The insurance proceeds for such loss shall be payable to the Hotel Owner (and thereafter applied pursuant to the terms of this Agreement); provided, however, if the loss constitutes a Depositary Event (hereinafter defined), then the insurance proceeds shall be paid to the Depositary in accordance with the terms of Article 17 hereof unless the Owners otherwise agree, subject to the consent of the Mortgagees.

(b) Completion of Repair and Restoration. The repair and restoration of that portion of the Core and Shell damaged by a loss shall be the sole responsibility of Hotel Owner for the benefit of all of the Owners, subject to the payment obligations of the Owners set forth in Section 10.4(a) hereof. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a contractor or contractors selected by Hotel Owner, subject to reasonable input from the Interested Parties, from contractors who are licensed to do business in the State of Illinois and who have substantial experience in the construction and renovation of properties of similar age and type of construction. If an architect or engineer is required in connection with such repair and restoration, such architect or engineer (as applicable) shall be selected by Hotel Owner, subject to reasonable input from the Interested Parties.

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(c) **Disbursement of Insurance Proceeds.** The property insurance proceeds shall be disbursed first for the repair or restoration of the damaged Core and Shell, and the Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged Core and Shell has been completely repaired or restored, expenses for the Depository have been paid or the Project is terminated, pursuant to **Section 10.5** hereof. The surplus insurance proceeds, if any, shall be payable to each Owner based upon the square footage of the respective percentage of ownership of the Core and Shell areas damaged.

(d) **Obligation to Repair and Restore Core and Shell.** Notwithstanding anything set forth in this Agreement to the contrary, other than as set forth in **Section 10.5** hereof, Owners' obligation to repair or rebuild the Core and Shell following a casualty shall be absolute.

(e) **Cost of Repairs.**

(i) Any costs (as such term is defined in **Section 10.6** hereof) incurred by Hotel Owner in connection with any Core and Shell repair and restoration work (together with a reasonable administrative fee or such fee to be agreed upon, in good faith, by the Owners, taking into account the nature and extent of Hotel Owner's responsibilities in connection with such repair and restoration work), shall be subject to reimbursement by the other Owners based upon the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

(ii) If the cost and expense of performing any repair and restoration provided for in this **Section 10.2** hereof shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the Owners in proportion to the Approved Division, unless the Owners mutually agree to an alternative method of allocation.

10.3 **Damage Affecting Only One Owner's Improvements and Owned Facilities**

(a) If any Owner's Improvements or Owned Facilities are damaged by casualty and if (and to the extent) such damage (i) does not adversely affect the use or operation of any other Owner's Improvements or Owned Facilities for their intended purposes, (ii) does not deprive any other Owner of the benefit of any Easement granted to such other Owner by this Agreement or any service to be performed for the benefit of such other Owner, (iii) does not adversely affect the physical appearance of the exterior of the Building, or interior portions of the Building located at the street level that are visible from the outside of the Building, and (iv) does not constitute a nuisance or an unreasonable risk of damage to any other Owner or their Occupants, then the Owner whose Improvements or Owned Facilities were damaged (the "**Affected Owner**") may, in the Affected Owner's sole discretion (subject to the rights of the Affected Owner's

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Mortgagee), elect to repair and restore, or not repair and restore, such damage (a "Permissive Repair"). Notwithstanding the foregoing, any damage which is covered by the Project Insurance shall be repaired and restored in accordance with Section 10.2 hereof.

(b) If any Owner's Improvements or Owned Facilities are damaged by casualty and if the provisions of Section 10.3(a) hereof are not applicable because the nature of the damage is such that one or more criteria (i) through (iv) of Section 10.3(a) are not satisfied, then, to the extent such damage does not fall within the parameters described in Section 10.3(a), the repair and restoration of only that portion of such damage which does not fall within Section 10.3(a) shall be the sole responsibility of the Affected Owner and any Affected Owner which fails to perform such repair or restoration is a Defaulting Owner. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Affected Owner by a contractor or contractors selected by the Affected Owner. The plans and specifications for such repair and restoration shall provide for the damaged portion of the Improvements and Owned Facilities to be rebuilt as nearly identical as commercially practicable to their original condition, unless prohibited by Law, or unless the other Owners otherwise agree. The architect or engineer preparing the plans and specifications shall furnish to each of the other Owners a set of the plans and specifications which it has prepared in connection with such repair and restoration.

(c) If the cost and expense of performing any repair and restoration provided for in this Section 10.3 shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be the sole obligation of the Affected Owner.

10.4 **Failure to Carry Insurance.** Notwithstanding the foregoing, if an Owner has not carried the insurance required to be carried by such Owner under Article 9 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

10.5 **Agreement Not to Repair.**

(a) **Unanimous Decision of Owners and Mortgagees.** If the Improvements on all of the Parcels are destroyed or substantially damaged, and each Owner agrees in writing not to rebuild, repair or restore such Improvements, subject to the written approval of the Mortgagees, it is the intent of the Owners that the insurance proceeds from the Project Insurance shall be shared (but only to the extent specified herein below in this Section 10.5).

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

(c) **Sale of Property and Allocation of Sale Proceeds.** If, pursuant to **Section 10.5(a)** hereof, the Owners and their Mortgagees unanimously agree not to rebuild, repair or restore the Property, the Owners, collectively, shall sell the entire Property as one undivided parcel and shall divide the proceeds from such sale among the Owners and their respective Mortgagees (as applicable) based upon the Disaster Allocation. Hotel Owner shall be responsible for coordinating the sale process on the Owners' behalf, with reasonable input from the Interested Parties. The Owners agree to reasonably cooperate with each other and otherwise act in good faith in connection with such sale.

10.6 **Cost Defined.** For purposes of this **Article 10**, architects' and engineers' fees, attorneys' fee, 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.

10.7 **Easements for Repair and Reconstruction.** The Owners hereby agree to grant to each other any necessary temporary easements for the repair and reconstruction of the Core and Shell, Improvements and Owned Facilities (as applicable) following any damage or casualty contemplated in this **Article 10**, including, without limitation, easements for ingress and egress for purposes of performing necessary repairs and reconstruction, easements for installation and Maintenance of scaffolding, cranes and any other construction equipment or Facilities necessary for the performance of any such repair or reconstruction work, easements for staging of construction equipment and materials, easements for crane arm swings, etc. The easement rights granted pursuant to this **Section 10.7** shall be construed in accordance with **Section 2.1** (as it relates to easement rights burdening the Hotel Parcel), and **Section 4.1** (as it relates to easement rights burdening the Retail Parcel). In granting and exercising any such easement rights, the grantee of any such easement rights shall (A) use best efforts to minimize the disturbance to the Improvements and personalty located on, and the operations and use of, the Parcel burdened by any such easement rights, (B) use best efforts to minimize the duration of the exercise of any such easement rights and (C) if and to the extent that the Improvements or personalty of the Owner

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whose Parcel is burdened by such easement rights are damaged, the Owner who caused any damage (or through which such damage was caused) shall promptly repair any such damage and shall indemnify, defend and hold harmless the Owner whose Improvements or personalty were damaged for any costs and expenses in connection with the repair and restoration of such Improvements or personalty so damaged.

ARTICLE 11

LIENS, DEBTS, INTEREST AND REMEDIES

11.1 Failure to Perform.

(a) If, at any time, any Owner fails within ten (10) business days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Agreement or any other time period expressly provided for such payment to be made (thereby becoming a Defaulting Owner) then, subject to Section 21.11, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have:

(i) a lien against the Parcel owned by the Defaulting Owner; and

(ii) for a default under Article 10, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such Parcel or otherwise under insurance policies carried pursuant to Article 9 hereof (subject in all respects to the rights of Mortgagees in such insurance proceeds, as set forth herein) to secure the repayment of such sum of money, all interest on such sum accruing pursuant to the provisions of this Article 11 and reasonable attorneys' fees incurred in connection with such failure to pay and efforts by the Creditor Owner to collect.

(b) Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("Default Amount") shall have been paid in full.

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

11.2 No Diminution of Lien.

(a) No conveyance or other divestiture of title (except foreclosure of the Existing Mortgage or a Prior Lien or the recordation of a deed in lieu of foreclosure

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thereof) shall in any way affect or diminish any lien perfected pursuant to this **Article 11**.

A "Prior Lien" means a Mortgage other than the Existing Mortgage which has been recorded against the Building, the Property, or any Parcel (as applicable) prior to the time of recording of the Creditor Owner's notice of lien.

Foreclosure of the Existing Mortgage or Prior Lien, or the recordation of a deed in lieu of foreclosure thereof, shall extinguish any lien pursuant to this **Article 11** arising prior to the date of such foreclosure or sale.

(b) Subject to the terms of **Section 11.2(a)**, above, if at any time, any Owner as a Creditor Owner has recorded a notice of lien under **Section 11.1** of this Agreement against any other Owner's Parcel, which lien has not been foreclosed, released, or satisfied in full, and if such other Owner's Parcel, or any part or interest therein, is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such Parcel, or part or interest thereof, the lesser of:

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

(c) Subject to the terms of **Section 11.2(a)**, above, if any portion of the Default Amount remains unpaid following any such sale, the Creditor Owner shall continue to have: (i) a lien on such Parcel, and (ii) the rights with respect to the proceeds of any subsequent sales of such Parcel to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Parcel. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under **Article 12**, then the proceeds which a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depository or other escrowee acceptable to both the Defaulting Owner and the Creditor Owner and held for disbursement at the joint order of the applicable Owners or as directed by court order or by the arbitrator in such arbitration, and the Creditor Owner shall release its lien of record.

11.3 **Mortgagee's Subrogation.** The holder of a Mortgage on all or any portion of a Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this **Article 11** affecting the Parcel secured by its Mortgage upon payment of the amount secured by such lien.

11.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to five percent (5%) per annum in excess of the annual prime rate of interest from time to time announced by JP Morgan Chase Bank, N.A. at Chicago, Illinois or any successor thereto, as its prime rate of interest, or if a

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prime rate is not announced or available, then interest shall accrue at the annual rate of eighteen percent (18%).

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

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

11.7 **Period of Limitation.** Actions to enforce any right, claim or lien under this Agreement shall be commenced within two (2) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute.

11.8 **Attorneys' Fees.** The non-prevailing party in any action brought by a Creditor Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) and fees and costs of the Architect arising out of such action paid or incurred. In the case of an appeal, reasonable attorneys' fees shall be payable after the decision in such appeal.

11.9 **Emergency Situation Self-Help.** Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Agreement which grants an Owner the right to perform an obligation which another Owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance written notice practicable under the circumstances to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default, in which case the Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the Creditor Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Agreement for non-performance of an obligation, such provision shall control the provisions of this **Section 11.9**.

11.10 **Subordination.** Notwithstanding anything to the contrary contained in this Agreement, any lien arising pursuant to this **Article 11** is and shall be superior to and shall take precedence over the lien of any Mortgage encumbering the Property to the full extent of any and all amounts secured by such Mortgage except the Existing Mortgage and any Prior Liens. The rights of the holder of any lien arising pursuant to this **Article 11** to foreclose upon or otherwise exercise any remedies with respect to any such lien shall be superior to and shall take precedence over the lien of any such Mortgage, except the Existing Mortgage, any Prior Liens and any rights of Hotel Manager in and to the Hotel Parcel pursuant to the Hotel Management Agreement.

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ARTICLE 12

ARBITRATION

12.1 **Disputes Subject to Arbitration.** Each of the questions, differences, disputes, claims or controversies arising among or between Owners under this Agreement which are expressly subject to arbitration under the terms of this Agreement which (a) shall not be resolved within forty five (45) days after it shall arise (or such other shorter or longer time period expressly provided herein) and (b) shall not exceed two hundred fifty thousand dollars (\$250,000) (the "**Arbitration Cap**") in claimed damages shall be submitted for arbitration (each, an "**Arbitrable Dispute**"). Any other disputes and disputes regarding claimed damages in excess of the Arbitration Cap shall be filed in a court of law or equity. Notwithstanding anything to the contrary contained herein, in no event shall any arbitration under this **Article 12** result in the change in the respective cost sharing percentages set forth in this Agreement.

12.2 **Arbitration Procedure.**

(a) The Arbitrable Dispute shall be resolved by binding arbitration which shall be commenced by filing a notice of arbitration under Rule 3 of the CPR Non-Administered Arbitration Rules, as they may be amended or modified from time to time (the "**Arbitration Rules**"). The Arbitrable Dispute shall be arbitrated in accordance with the Arbitration Rules then in effect, by a sole arbitrator selected in accordance with the Arbitration Rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having competent jurisdiction. The place of the arbitration shall be Chicago, Illinois. Except as modified by this **Section 12.2**, the Arbitration Rules shall govern the arbitration.

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

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

(d) **Rules of Evidence in Arbitration.** Strict rules of evidence shall not apply in an arbitration conducted pursuant to this Agreement. The applicable Owners

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may offer such evidence as they desire, and the arbitrator shall accept such evidence as the arbitrator deems relevant to the issues and accord it such weight as the arbitrator deems appropriate. The arbitrator shall be the exclusive judge of relevancy and materiality notwithstanding the amount in controversy.

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

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

12.3 **Provisional Remedies.** The procedures specified in this **Article 12** shall be the sole and exclusive procedures for the resolution of Arbitrable Disputes between or among the Owners arising out of or relating to this Agreement; provided, however, that any Owner, without prejudice to the above procedures, may file to seek a preliminary injunction or other provisional, injunctive or equitable judicial relief if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the applicable Owners will continue to participate in good faith in the procedures specified in this **Article 12**.

12.4 **Costs.** The costs of the dispute resolution, including attorneys' fees and other costs of trial or arbitration (including the fees and costs of the Architect arising out of such arbitration), shall be borne by the non-prevailing Owners in the Arbitrable Dispute.

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

12.6 **Notice to Mortgagees.** The Owner initiating arbitration shall notify the Mortgagees who have provided notice pursuant to **Section 21.11(b)** of the filing of a claim and demand in arbitration within five (5) days thereafter.

12.7 **Finality.** The decision of the arbitrator, and any award of the arbitration, shall be final, binding upon the applicable Owners and unappealable, and judgment thereon shall be entered by any court of competent jurisdiction. Failure to comply with the decision of the arbitrator shall be deemed a default under this Agreement. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in **Section 11.4**.

ARTICLE 13

COOPERATION; UNAVOIDABLE DELAYS

13.1 **Construction.** As of the Effective Date, the Hotel Parcel Improvements and Retail Parcel Improvements have been constructed in accordance with the Project Plans.

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

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

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

ARTICLE 14

CONDEMNATION

14.1 **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Project by any competent authority for any public or quasi-public use, the award, damages or just compensation (the "**Award**") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Project shall be performed, in accordance with the requirements of this **Article 14**. The Owners shall cooperate with one another to maximize the amount of the Award. A Mortgagee shall have the right to appear in any condemnation proceeding and to take part in any settlement discussions related to condemnation.

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14.2 **Payment of Award to Depositary; Temporary Taking Awards.** All Awards resulting from the taking of all or any part of any Parcel, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depositary by the Owners, regardless of the Owner who received the Award, except as otherwise provided in **Section 14.3**, and the Depositary shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective Parcel.

14.3 **Taking of Only One Parcel.**

(a) In the event of a taking (other than a temporary taking) of all or any portion of a Parcel which taking does not affect any other Parcel (or Owned Facilities of any other Owner), then, subject to the provisions of **Section 14.6** hereof, the Owner of the Parcel, Improvements or Facilities affected by such taking shall repair and restore the remainder of Improvements or Facilities to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of another Owner reasonably necessary to such other Owner's operations or the services to be furnished to such other Owner under **Article 6** or if otherwise required by this Agreement.

(b) Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the Parcel in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of **Article 18** hereof and to retain any excess not required for such repair and restoration; provided, however, that the right of any Owner to receive a portion of such excess, if any, shall be subject to the provisions of **Section 21.11** and to Mortgages encumbering the Parcel affected by the taking. If the cost of repair or restoration is estimated to be less than \$100,000, then the Award need not be paid to the Depositary.

(c) If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration which adversely and materially affects an Easement reasonably necessary to another Owner's operations or the services to be furnished to any of the other Owners under **Article 6** hereof, then:

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

(ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) a Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry

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out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with **Article 18** hereof, be entitled to withdraw any Award and any other monies held by the Depositary as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies.

(d) Repair and restoration under this **Section 14.3** constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain any other Owner's consent if it would not otherwise be required under **Article 15**.

14.4 **Repair and Restoration.**

(a) In the event of a taking (other than a temporary taking) affecting two or more Parcels, then, subject to the provisions of **Section 14.6** hereof, the Owners shall cooperate to repair and restore the remainder of their respective Improvements and Owned Facilities in accordance with plans and specifications (hereinafter described) approved by such Owners and their respective Mortgagees; provided, however, with respect to any Core and Shell portion of such Improvements and Owned Facilities, Hotel Owner shall be responsible for such repair and restoration on the Owners' behalf in accordance with **Section 10.2(b)** hereof; further provided, however, that the costs of such repair and restoration shall be paid with the Award. Each Owner shall cause the repair and restoration of its respective Improvements and other Facilities to be commenced and pursued to completion in as timely a manner as practicable under the circumstances by a contractor or contractors selected by such Owner, and otherwise in accordance with **Section 10.3(b)** hereof (subject to the approval of its Mortgagee).

(b) The plans and specifications for such repair and restoration shall be prepared by the Architect, unless such Owners shall otherwise agree, all subject to the approval of their Mortgagees. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements, as applicable, to form an architectural and functional whole, with such changes as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement are extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under this Agreement and for the furnishing of services under **Article 6** hereof. The Architect will furnish to such Owners (but only if and to the extent each such Owner's approval is required) and their Mortgagees a set of such plans and specifications for their approval. Unless such Owners otherwise agree (subject to the approval of their Mortgagees), the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owner or Owners in whose portion of the Parcel such repair and restoration is being performed and the Mortgagees of each such Parcel, as such repair and restoration

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progresses, to disburse, in accordance with **Article 18** hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

14.5 **Excess Award.** 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). Any excess of the Award over the cost of repair and restoration shall then be allocated to each Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's Parcel) bears to the apportionment of the Award to the other Owners (including parties with an interest in such other Owner's Parcel); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of **Section 21.11**. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

14.6 **Demolition.** If, as a result of a taking (other than a temporary taking), any Owner reasonably determines that its improvements can no longer be repaired or restored or operated on an economically feasible basis, then such Owner shall notify the other Owners and their Mortgagees who have provided the notice set forth in **Section 21.11(b)**, below, of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its Improvements as may be required by **Section 14.3** and **Section 14.4** hereof. However, such Owner not repairing or restoring shall repair or restore its Improvements, to the extent, if any, as may be necessary, to provide the required services set forth in this Agreement or Easements (including, but limited to, structural support) reasonably necessary to the operations of the other Owners. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of **Section 14.4** hereof are applicable.

14.7 **Allocation of Award.** In the event of a taking of all or substantially all of more than one Parcel, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners, subject to the rights of their respective Mortgagees, in accordance with said apportionment; provided, however, that the right of an Owner to receive its share of any award and payment shall be subject to the provisions of **Section 21.11**; further provided, however, with respect to any Owner required to perform any demolition, repairs or restoration in accordance with **Section 14.6** of this Agreement, the cost of any such demolition, repair or restoration work shall first be deducted from such Owner's share of the award (unless such costs have already been paid in full by such Owner).

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ARTICLE 15

ALTERATIONS; ZONING

15.1 Permitted Alterations.

(a) An Owner (hereinafter in this Article 15, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article 15, "Alterations") to the Improvements within such Altering Owner's Parcel, provided such Alterations comply with all of the provisions of this Article 15 applicable to the Parcel owned by such Owner. Alterations shall also include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 15. Replacement of Facilities may be made by an Altering Owner without consent of any other Owner. The provisions of this Article 15 governing Alterations do not negate or diminish other provisions of this Agreement having to do with additions, improvements or alterations expressly required or permitted in Article 6 (Services), Article 7 (Compliance with Laws), Article 10 (Maintenance and Repair) and Article 14 (Condemnation) hereof, which are governed by such provisions only and not this Article 15 unless also designated in such Articles as "Alterations" to be governed by this Article 15. Notwithstanding any provision to the contrary, the provisions of this Article 15 shall not apply to (A) any Owner until its portion of the Project is substantially complete and ready for occupancy and (B) any right to exercise self-help remedies as provided in Section 11.9 or elsewhere in this Agreement.

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

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

(ii) during their performance or upon their completion, materially degrade or diminish services to such other Owner under Article 6;

(iii) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to Article 6 hereof;

(iv) materially alter the Façade;

(v) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports (other than minor work which will not affect the structural soundness of the Building or which in the opinion of a structural engineer would not materially affect the structural soundness of

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the Building) or would impair, undermine or adversely affect the structural safety or integrity of any portion of the Building.

(vi) consist of or result in discharge, release, emission, deposit, treatment, transport, production, incorporation, disposal, leakage, transfer of escape of Hazardous Materials or odorous gases, in a manner which fails to comply with any applicable Law if such other Owner could be adversely affected by such Alterations;

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

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

Notwithstanding anything to the contrary contained in this Agreement, except as expressly permitted in this Agreement, no Owner shall be permitted to perform any Alteration that affects the Façade or appearance of the Building (beyond the scope of the Project Plans) without first obtaining the consent of each of the other Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

15.2 Notification.

(a) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of any other Owner) the consent of any other Owner, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such Owner a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 15.2.

(b) An Altering Owner may also at any time request confirmation from any other Owner that its consent is not required with respect to proposed Alterations, if such Alterations do not require its consent, and such confirmation shall be given within fifteen (15) business days after the request is made. Failure to respond during such fifteen (15) business day period shall be deemed confirmation that no consent is required.

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

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

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

(d) If, in the good faith opinion of any other Owner, the Altering Owner has violated or will violate the provisions of Section 15.1(a) or Section 15.1(b), then such Owner (the "Objecting Party") believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 15.1(a) or Section 15.1(b) hereof, and shall specify the respect or respects in which its provisions are or will be violated.

(e) If an Objecting Party in good faith asserts a violation of Section 15.1(a) or Section 15.1(b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to the rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of Section 15.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(f) Each Owner making Alterations shall:

(i) perform all work in a good and workmanlike manner and in accordance with good construction practices,

(ii) comply with all Laws, including, without limitation, the City's Building Code,

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

(iv) carry or cause its contractors to carry "all risk" builder's risk insurance (including loss of income and "soft costs") for not less than the

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completed value of the work being performed by such Owner for any Alterations which require another Owner's consent under **Section 15.1**. Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of buildings in the City which are consistent with the Project Quality Standards, to the extent that such coverage is not already in place under the existing insurance policies for such Parcel.

(g) Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Improvements in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would disturb any Occupant or occupants of the other portion of the Improvements, as applicable, but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property or harm to persons) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances.

(h) An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by the other Owner who would otherwise suffer unreasonable disturbance, the Altering Owner (i) shall perform work only during such hours as may be appropriate to at all times meet the Project Quality Standards (including, without limitation, minimizing any late night disturbance of guests of the Hotel Parcel), and shall not unreasonably refuse to perform work outside normal business hours (ii) shall pay all costs associated with work at times other than normal business hours, including overtime and delay costs.

15.3 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City or other government agency having jurisdiction thereof requires joinder of any other Owner. An Altering Owner shall send copies of any building permits to any other Owner at such other Owner's request. If joinder by such other Owner(s) not making Alterations is so required, such other Owner(s) shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify, and hold harmless such other Owner(s) from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of the execution of the application, permit or other instrument by such other Owners.

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

(a) recognizes the separate ownership of the Hotel Parcel and the Retail Parcel, and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (said Act and any

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successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the portion of the Project owned by the Altering Owner, or

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

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

ARTICLE 16

ESTOPPEL CERTIFICATES

16.1 **Estoppel Certificates.** Each Owner shall, from time to time but not more than four times in a twelve month period, within thirty (30) days after written request from another Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 21.11(b) hereof, execute, acknowledge and deliver to the requesting party, a certificate ("Estoppel Certificate") stating:

(a) That the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying such modifications;

(b) Whether, to the actual knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Agreement (or grounds therefor after giving the requisite notice hereunder) by the Requesting Owner and, if so, specifying the nature and extent thereof;

(c) Whether there are any sums (other than payments for Operating Expenses owed under Exhibit 6.6 which in the aggregate are less than \$10,000 and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the Requesting Owner, and, if there is any such sum, specifying the nature and amounts thereof;

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(d) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 6 hereof the cost of which such Owner is or will be entitled to charge in whole or in part to the Requesting Owner under the provisions hereof but has not yet charged to such Requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected amount to be paid by the Requesting Owner;

(e) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder), or otherwise known by the Owner to its actual knowledge, against the enforcement of the Requesting Owner's rights hereunder;

(f) The total amount of all liens being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder) by the Owner executing the Estoppel Certificate to its actual knowledge under the provisions of this Agreement describing the applicable provision or provisions and the details of any such lien claim;

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

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

(i) The current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 20 hereof; and

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

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

ARTICLE 17

DEPOSITARY

17.1 Appointment of Depositary.

(a) If a Depositary Event (hereinafter defined) shall occur, a depositary (the "Depositary") shall be appointed for the benefit of the Mortgagees and Owners, as their respective interests may appear, at or before such time as the duties of Depositary are to be performed, in the manner hereinafter provided to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with

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the terms and provisions of this Agreement. The Depositary shall be appointed by the Owners jointly (with the reasonable approval of their respective Mortgagees, if required by the applicable Mortgagee), and the initial Depositary shall be Chicago Title and Trust Company, 171 N. Clark Street, Chicago, Illinois 60601, for the benefit of the Mortgagees and Owners, as defined therein, as their interests may appear. Any other Depositary selected by the Owners shall be one of the then five (5) largest trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois or other bank or trust company agreed to by the Owners. Any Owner may at any time propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) business days after receipt of the proposal by such Owner, the disagreement shall become an Arbitrable Dispute. As used herein, the term "Depositary Event" means (i) a casualty loss to the Core and Shell Improvements located on the Retail Parcel, which loss is covered by the Project Insurance and requires repairs to the Retail Parcel Core and Shell Improvements costing in excess of \$1,000,000; or (ii) any taking described in Article 14 above which requires the Award to be deposited with a Depositary.

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

(c) Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment in substantially the form attached hereto as Exhibit 17.1 and made part hereof.

17.2 **Liability of Depositary.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence or willful misconduct. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation Award or Awards unless the Depositary shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to said insurance proceeds or condemnation Award or Awards, then said Owner may authorize the Depositary to so proceed. In addition, the Depositary may rely conclusively on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 18.1 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 **Interest on Deposited Funds.** The Depositary shall have no obligation to pay interest on any monies held by it, unless the Depositary shall have given an express written undertaking to do so, or unless the Owner or Owners for whose benefit monies are being held have requested, and the Mortgagees of said Owners have concurred (if required), in connection with a specified deposit of funds with the Depositary, that the Depositary undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among

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

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

17.5 **Resignation of Depository.** The Depository may resign by serving not less than sixty (60) days' prior written notice on all of the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall, in the manner set forth in **Section 17.1**, appoint a substitute who qualifies under **Section 17.1** hereof (if there are duties to be performed at such time by a Depository or funds are held by the resigning Depository), and the Depository shall prepare a final accounting of all funds received, held and disbursed by it and shall transfer all funds, together with copies of all records, held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, and there are funds held by the resigning Depository, the Depository may deposit such funds with either a court of competent jurisdiction or with a trust company in Chicago, Illinois, which qualifies under **Section 17.1** hereof.

ARTICLE 18

DISBURSEMENTS OF FUNDS BY DEPOSITARY

18.1 **Disbursement Requests.**

(a) Each request by the Architect acting pursuant to the provisions of this Agreement for disbursement of insurance proceeds, any Award or other funds for

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

(i) That the sum requested:

(A) has been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of more than one Owner (in which event the certificate shall specify the amount paid by each Owner), or

(B) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Work, in which event the certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof the respective amounts so paid or due to each of said persons in respect thereof and the amount of any retentions, and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics' Liens Act and any title insurer affording coverage against mechanics' liens;

(ii) That the sum requested, plus all sums previously disbursed, less retentions, does not exceed the cost of the Work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site;

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

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

(b) Upon:

(i) compliance with the provisions of Section 18.1(a), and

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

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(iii) approval by the title insurer, the Owners and the Mortgagees of the lien waivers and other documentation (and Depository shall provide to the Mortgagees any other information reasonably requested by any such Mortgagees), and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and the Mortgagees) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the liens in favor of the Mortgagees, and

the Depository shall out of the monies so held by the Depository, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owner or Mortgagee or the Depository may require that disbursements be made through the customary form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Agreement.

The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Architect to the Depository in accordance with the provisions of this Sect. on 18.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

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

ARTICLE 19

ARCHITECT

19.1 Appointment of Architect.

(a) Any Owner or Owners jointly requiring the services of an architect pursuant to this Agreement shall 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

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Improvements to serve under and pursuant to the terms and provisions of this Agreement (the "Architect").

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

(c) If the Owners do not collectively desire to replace the Architect, then the Requesting Owner desiring replacement of the Architect shall serve notice upon the other Owners and the Mortgagees requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform fairly, diligently or competently. If, in the opinion of any Owner or Mortgagee receiving such notice, the Requesting Owner is not entitled to require the appointment of a new Architect pursuant to this **Section 19.1**, any Owner or Mortgagee receiving such notice and objecting to the appointment of a new Architect shall notify the Requesting Owner, the other Owners and Mortgagees of its objection in writing within ten (10) business days after receipt of such notice from the Requesting Owner. If, within ten (10) business days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences (subject to the approval of their Mortgagees), or if the Owners fail to agree on the form of agreement, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether the Requesting Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners and the Mortgagees.

19.2 Notice of Submission of Dispute to Architect. In any instance when the Architect serving pursuant to **Section 19.1** hereof is authorized by this Agreement to advise the Owners concerning any dispute or matter, any Owner may submit the same to the Architect. Any Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners and the Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owners or the Mortgagees, an opportunity to furnish information or data or to present such party's views. No advice given by the Architect under this Agreement shall be binding on the Owners, and the Owners may accept or reject such advice.

19.3 Replacement of Architect. If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any

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plans and specifications or in the supervision of any work required hereunder or pursuant hereto, then, if the Owners so choose, subject to the consent of the Mortgagees, the Architect being replaced shall continue to act as Architect with respect, and only with respect, to such pending dispute or matter or the completion of such preparation of plans and specifications or supervision of any such work.

19.4 **Architect's Fees.** The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner involved in the work shall pay its equitable share of such fees, if not otherwise provided in this Agreement. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Agreement, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements, or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition as applicable, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Agreement pursuant to which the Architect is performing such services. If not otherwise provided in this Agreement, the Owners shall agree on the equitable share owed by each Owner. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) business days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and thereby become a Creditor Owner and be entitled to all rights under **Article 11** of this Agreement.

ARTICLE 20

NOTICES AND APPROVALS

20.1 **Notice to Parties.**

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

If to Declarant:

11 South LaSalle Hotel Partners, LLC
 c/o The Prime Group, Inc.
 120 N. LaSalle Street, Suite 3200
 Chicago, IL 60602
 Attn: Michael W. Reschke
 Phone: (312) 917-4201
 Fax: (312) 782-5867

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With a copy to: Goldman Sachs Realty Management, L.P.
 6001 Connection Drive
 Irving, TX 75039
 Attention: Asset Manager
 Phone: (972) 368-2200
 Fax: (972) 368-3597

If to Hotel Owner: 11 South LaSalle Hotel Partners, LLC
 c/o The Prime Group, Inc.
 120 N. LaSalle Street, Suite 3200
 Chicago, IL 60602
 Attn: Michael W. Reschke
 Phone: (312) 917-4201
 Fax: (312) 782-5867

With a copy to: Goldman Sachs Realty Management, L.P.
 6001 Connection Drive
 Irving, TX 75039
 Attention: Asset Manager
 Phone: (972) 368-2200
 Fax: (972) 368-3597

And a copy to: Residence Inn by Marriott, LLC
 c/o Marriott International, Inc.
 10400 Fernwood Road
 Bethesda, Maryland 20817
 Attention: Law Department 52/923 – Hotel
 Operations
 Phone: (301) 380-9555
 Fax: (301) 380-6727

If to Retail Owner: 11 South LaSalle Hotel Partners, LLC
 c/o The Prime Group, Inc.
 120 N. LaSalle Street, Suite 3200
 Chicago, IL 60602
 Attn: Michael W. Reschke
 Phone: (312) 917-4201
 Fax: (312) 782-5867

With a copy to: Goldman Sachs Realty Management, L.P.
 6001 Connection Drive
 Irving, TX 75039
 Attention: Asset Manager
 Phone: (972) 368-2200
 Fax: (972) 368-3597

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and to any Mortgagee which has complied with the notice provisions of Section 21.11 hereof.

NOTICES ALLEGING A DEFAULT OR BREACH UNDER THIS DECLARATION OR CONTAINING A REQUEST FOR ANOTHER OWNER'S APPROVAL UNDER THIS DECLARATION shall clearly state the purpose of the notice in its subject clause toward the beginning of the notice, name the Sections of the Declaration directly relevant to the subject matter of the notice, the maximum time period if applicable under the Declaration for replying to the notice, and whether failure to respond to the notice is deemed a consent under the express terms of the Declaration.

(b) Any Owner may designate a different address from time to time, provided however it has given at least five (5) business days' advance notice of such change of address. Any successor Hotel Managers to the Residence Inn by Marriott, LLC, shall promptly identify themselves in the aforesaid manner; in addition, Hotel Owner shall provide notice of any change in the identity of the Hotel Manager in the same manner. Failure to give notices to any Owner's or Mortgagee's counsel whom such Owner or Mortgagee has requested that copies be delivered to shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "Owner" of its respective portion of the Improvements, and the succeeding Owner of that portion of the Improvements shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's portion of the Improvements as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City department or agency having jurisdiction over City addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Improvements in question.

20.2 Multiple Owners.

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

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

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

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(b) Until any such designation is revoked by written notice given by all of their multiple owners or their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this **Article 20** collectively referred to as "**legal process**"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent.

(c) If the multiple owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process as stated above.

ARTICLE 21

GENERAL

21.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Improvements and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate or interest in the Land and Improvements. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as an Owner may reasonably deem confidential or privileged or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the Effective Date, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as the other 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.

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

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

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

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effect of the Articles or Sections. The Exhibits referenced in this Agreement and attached hereto are incorporated herein and made part hereof.

21.5 **Amendments to Agreement.** This Agreement may be amended or terminated only by a duly recorded instrument signed by the Hotel Parcel Owner and Retail Parcel Owner and consented to by each of their respective Mortgagees, if any. Any amendment to or termination of this Agreement shall be recorded with the Recorder. Any such amendment shall not be effective until it is so recorded. To the extent either Owner's Mortgagee require reasonable changes be made to this Agreement as a condition to financing such Owner's portion of the Project, the other Owner agrees that it shall not unreasonably withhold or delay its consent and will cooperate with the Requesting Owner to execute any such necessary amendment, provided such change will not have an adverse effect upon either the non-requesting Owner or the non-requesting Owner's Parcel, the costs of any such amendment shall be borne exclusively by the Requesting Owner, and the reasonable attorneys' fees incurred by the non-requesting Owner in reviewing and if necessary negotiating such amendment shall be promptly paid by the Requesting Owner no later than the execution and delivery of such amendment; and further provided that no party shall be required to agree to a change in any percentage specified herein for the sharing of expenses.

21.6 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual to coincide with the perpetual Easements provided for under this Agreement (or if the Law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If the Law prescribes such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of twenty (20) years), subject to amendment or termination as set forth in **Section 21.5**. If any of the options, privileges, covenants or rights created by this Agreement would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama, the current President of the United States of America.

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

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

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

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

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

(a) The term "**Mortgage**" as used herein shall mean any Mortgage as defined in **Section 1.1(eee)**. The term "**Mortgagee**" as used herein shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed) and their respective successors and assigns.

(b) If a Mortgagee shall have served on the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of every default notice given by one party to the Owner of the Parcel subject to the Mortgage issued for the benefit of such Mortgagee at the same time as and whenever such notice shall thereafter be given by one party to such Owner, at the address last furnished by such Mortgagee. Notwithstanding the foregoing, once a release of such Mortgage has been recorded against the affected Parcel, such Mortgagee shall no longer be entitled to notice in accordance with this **Section 21.11(b)**.

(c) If a Mortgagee shall have signed the Consent of Mortgagee form attached hereto as **Schedule 2**, or delivered notice to the Owners pursuant to and in accordance with subparagraph (b) above, and if an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its Mortgagee and such appointment and action shall be recognized in all respects by the other Owners.

(d) A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Agreement by the Owner whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach to such mortgagor Owner plus an additional period equal to (i) ten (10) business days with respect to a monetary default and (ii) thirty (30) days with respect to a non-monetary default, in each case, following the later to occur of the expiration of the cure period permitted to such mortgagor Owner hereunder and the date of receipt of notice of such breach by a Mortgagee which has provided the notice set forth in **Section 21.11(b)** above.

21.12 **Coordination with Tenants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall, diligently and in good faith, coordinate all requests and contacts between Occupants of its Parcel and the other Owners relating

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

21.13 **Waiver of Mechanic's Liens by Owners.** The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claims of or rights to liens which such Owners may have under the Mechanic's Lien Act against, or with respect to the Property or Improvements owned by the other Owner or any part thereof or with respect to the estate or interest of any person whatsoever in the Property or Improvements owned by any other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery, furnished or to be furnished thereto pursuant to this Agreement, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or subsubcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to **Article 6** or **Article 7** of this Agreement. The Hotel Owner and the Retail Owner agree that, to the extent permitted by Law, the legal effect of this Agreement is that no mechanic's lien or claim may be filed or maintained by any Owner under the Mechanic's Lien Act with respect to that portion of the Property or Improvements owned by any other Owner, except as set forth above with regard to **Article 6** and **Article 7** of this Agreement. The provisions of this **Section 21.13** are not intended to waive any lien created under **Article 11**.

21.14 **Binding Effect.** The Easements, covenants and restrictions created under this Agreement shall be irrevocable and, subject to **Section 21.5** of this Agreement, perpetual in nature, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the Land.

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

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

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

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

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or supplement hereto. No party hereto may rescind this Agreement without the written consent of all of the Owners and, if applicable, their Mortgagees.

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

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

21.21 **Notice to Hotel Manager; Rights of Hotel Manager.** (a) Retail Owner shall, for the benefit of Hotel Manager, deliver to Hotel Manager, at the address last furnished by Hotel Manager, a copy of every default notice given by Retail Owner to the Hotel Owner at the same time as and whenever such notice shall be given by Retail Owner to Hotel Owner.

(b) If Hotel Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement with respect to arbitration, such appointment or action as otherwise would have been permitted by Hotel Owner may be taken by Hotel Manager and such appointment and action shall be recognized in all respects by Retail Owner.

(c) Hotel Manager shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Agreement by Hotel Owner within any applicable cure period provided for such breach to Hotel Owner.

ARTICLE 22

LIMITATION OF LIABILITY

22.1 **Limitation of Liability.** The liability under this Agreement of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Facilities (including insurance and condemnation proceeds attributable to the Property and Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust), any and all rights to receive rents and other income from such Owner's Parcel (or any portion thereof) in the future, and any security, such as a letter of credit or bond provided pursuant to this Agreement, and no other assets of such Owner. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and the negative capital account of a partner in a partnership, or a member in a limited liability company, which is an Owner and an obligation of a partner to contribute capital to the partnership, or a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which

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an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability, shall be asserted or be enforceable against it or any of the beneficiaries under said trust Agreement by reason of any of the covenants or conditions contained herein. Notwithstanding anything to the contrary contained in this Section 22.1, this Section 22.1 shall not be construed so as to limit any rights of a Mortgagee to enforce any recourse rights it may have against its borrower.

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

(a) to the extent of such assignment, transfer, conveyance or other disposition of its Parcel, such Owner shall be freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such Owner shall make such sale, assignment, transfer, conveyance or other disposition, and

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

ARTICLE 23

STRUCTURAL SUPPORT

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

23.2 **Construction of Support.** The Owner responsible for any adverse effect on the structural safety or integrity of any portion of the Building shall commence the construction of all necessary remedial structural support within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by Architect and the other Owners, which such approvals shall not be unreasonably withheld or delayed. The responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs. The provisions of Article 10, and not this Article 23, shall apply if the adverse effect of the structural safety or integrity of the Building results from a fire or other casualty. The construction of such necessary remedial structural support shall be performed by a contractor or contractors jointly selected by the Owners (with the advice of the Architect). If the Owners, and

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the Owners' Mortgagees, fail to agree upon the selection of a contractor or contractors, the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this **Article 23**, provision or construction of necessary remedial structural support shall also include any Maintenance required to remedy or prevent any adverse effect on the structural integrity or safety of the Building.

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

ARTICLE 24

OWNERSHIP OF FACILITIES

24.1 **Facilities Owned by Hotel Owner.** For purposes of clarification, the Hotel Owned Facilities and Hotel Parcel Improvements (as applicable) shall include, without limitation, the following:

- (a) Facilities shared among the Owners which support wastewater/sanitary sewer discharge from the Parcels and which connect to the City's wastewater/sanitary sewer systems.
- (b) Vertical drain riser and any other Facilities shared among the Owners which support stormwater drainage Facilities which service the Parcels.
- (c) Fire pump, combination standpipe and fire and life safety central monitoring panel system and any other Facilities which support such fire and life-safety systems which service the Parcels.
- (d) [Intentionally Omitted.]
- (e) All Loading Facilities (as defined in **Section 2.2(d)** hereof) and any other Facilities which support such Loading Facilities.
- (f) [Intentionally Omitted.]
- (g) All Facilities to be installed on or after the date hereof which are intended to be used exclusively by Hotel Owner.

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(h) All shared Facilities which supply natural gas, electrical and telephone/cable/data services to the Hotel Parcel and Retail Parcel unless owned by third parties supplying natural gas, electrical and telephone/cable/data services, as the case may be.

(i) The Exterior Lighting.

(j) The Hotel Façade.

(k) All windows located in the Hotel Parcel.

(l) All of the Facilities shared by Hotel Owner and Retail Owner which supply domestic water to such Parcels and which connect to the City's domestic water systems.

(m) Chilled water system which supplies chilled water to the Hotel Parcel and Retail Parcel, other than Facilities which connect to such chilled water system and exclusively service the Retail Parcel.

(n) Hot water system which supplies hot water to certain Facilities which service the Retail Parcel other than Facilities which connect to such hot water system and exclusively service the Retail Parcel.

(o) HVAC system which supplies heating, ventilation and air conditioning to the Hotel parcel and Retail Parcel, other than any such Facilities which connect to such HVAC system and exclusively service the Retail Parcel

(p) All of the Elevator Banks and related Facilities located in the Hotel Parcel and the Shared Freight Elevators located in the Hotel Parcel, except for the Exclusive Retail Parcel Elevator, subject to the rights of (A) Hotel Owner and Retail Owner to use such elevators to access the roof of the Building in connection with their respective Communications Facilities, and (B) Hotel Owner to access the Exclusive Retail Parcel Elevator in an Emergency Situation.

(q) The roof of the Building and related stormwater drainage Facilities which exclusively service the roof of the Building.

(r) All other Facilities which (A) relate to any of the items referenced in **Section 24.1(a) through (q)** above and (B) exclusively service the Hotel Parcel.

All of the Facilities referenced in this **Section 24.1** shall be owned by Hotel Owner, regardless of whether they are or will be located on the Hotel Parcel or the Retail Parcel.

24.2 Facilities Owned by Retail Owner. For purposes of clarification, the Retail Owned Facilities and Retail Parcel Improvements (as applicable) shall include, without limitation, the following:

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- (a) Hot water system which exclusively services the Retail Parcel.
- (b) All of the Facilities supplying domestic water to the Retail parcel, which exclusively service the Retail Parcel.
- (c) All Facilities to be installed on or after the date hereof which are intended to exclusively service the Retail Parcel.
- (d) The Retail Façade.
- (e) All windows located in the Retail Parcel.
- (f) The Exclusive Retail Parcel Elevator.
- (g) All other Facilities which (A) relate to any of the items referenced in **Section 24.1(a) through (f)** above and (B) exclusively service the Retail Parcel.

All of the Facilities referenced in this **Section 24.2** shall be owned by Retail Owner, regardless of whether they are or will be located on the Hotel Parcel or the Retail Parcel.

[remainder of page intentionally left blank]

[signatures appear on the next page]

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IN WITNESS WHEREOF, Declarant has caused this Agreement to be executed the day and year first above written.

DECLARANT:

11 SOUTH LASALLE HOTEL PARTNERS, LLC,
a Delaware limited liability company

By: PLMP Holdings, LLC,
a Delaware limited liability company,
its Administrative Member

By: Prime LaSalle/Madison Partners, LLC,
an Illinois limited liability company,
its Member

By: 
Michael W. Reschke
Title: Manager

Cook County Clerk's Office

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STATE OF Illinois)
) SS
COUNTY OF Cook)

I, Isaura Zavala, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael W. Reschke, the Chairman and CEO of The Prime Group, Inc. an Illinois Corporation, the Manager of 11 S. LaSalle Hotel Partners, a n Illinois Limited Liability Co. who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of March, 2018.

Isaura Zavala
Notary Public

My Commission expires 10-23-2020



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Exhibit A

Legal Description of the Land

PARCEL 1:

THE NORTH 90 FEET OF LOT 1 AND THAT PART OF THE NORTH 90 FEET OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 OF SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES EAST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF;

PARCEL 2:

ALSO LOT 3 AND THAT PART OF LOT 2 IN SUBDIVISION (BY CHICAGO HYDRAULIC COMPANY) OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES WEST OF A LINE EXTENDING SOUTH FROM A POINT ON THE NORTH LINE OF SAID LOT 2 WHICH IS 15.24 FEET WEST FROM THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID LOT 2 WHICH IS 14.90 FEET WEST FROM THE SOUTHEAST CORNER THEREOF, EXCEPTING FROM THE AFOREMENTIONED PART OF LOT 2 THAT PORTION OF SAID PART LYING SOUTH OF THE NORTH 90 FEET OF LOT 2 AND FALLING WITHIN THE EAST 15 FEET OF LOT 2.

PARCEL 3:

TOGETHER WITH LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LA SALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

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Exhibit B-1

Legal Description of The Hotel Parcel

HOTEL PARCEL 1

LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LA SALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,

(EXCEPT THAT PART OF SAID LOT 1 LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +28.29 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE THEREOF 66.04 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00°01'31" WEST ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 79.42 FEET; THENCE SOUTH 89°58'38" WEST 6.85 FEET; THENCE NORTH 00°01'22" WEST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 7.25 FEET; THENCE NORTH 00°01'22" WEST 14.49 FEET; THENCE SOUTH 89°58'38" WEST 8.75 FEET; THENCE SOUTH 00°01'22" EAST 19.70 FEET; THENCE SOUTH 89°58'38" WEST 18.12 FEET; THENCE SOUTH 00°01'22" EAST 17.24 FEET; THENCE SOUTH 89°58'38" WEST 13.94 FEET; THENCE SOUTH 00°01'22" EAST 0.83 FEET; THENCE SOUTH 89°58'38" WEST 11.02 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°02'28" WEST ALONG SAID WEST LINE 97.14 FEET, TO THE POINT OF BEGINNING;

*ALSO EXCEPT THAT PART OF SAID LOT 1 LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +1.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: **BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE THEREOF 43.52 FEET; THENCE SOUTH 00°01'22" EAST 27.44 FEET; THENCE NORTH 89°58'38" EAST 0.48 FEET; THENCE SOUTH 00°01'22" EAST 22.56 FEET; THENCE SOUTH 89°58'38" WEST 7.68 FEET; THENCE SOUTH 00°01'22" EAST 2.13 FEET; THENCE SOUTH 89°58'38" WEST 9.11 FEET; THENCE NORTH 53°17'21" WEST 0.85 FEET; THENCE SOUTH 89°58'38" WEST 1.69 FEET; THENCE NORTH 00°01'22" WEST 22.29 FEET; THENCE SOUTH 89°58'38" WEST 6.09 FEET; THENCE NORTH***

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00°01'22" WEST 8.46 FEET; THENCE SOUTH 89°58'38" WEST 18.75 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°02'28" WEST ALONG SAID WEST LINE 20.89 FEET, TO THE POINT OF BEGINNING),

IN COOK COUNTY, ILLINOIS.

HOTEL PARCEL 2

LOTS 4 AND 5 OF ASSESSOR'S DIVISION OF BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT,

(EXCEPT THAT PART OF SAID TRACT LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +28.29 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE OF LOTS 4 AND 5 A DISTANCE OF 75.56 FEET TO THE NORTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 00°04'17" EAST ALONG THE EAST LINE THEREOF 37.41 FEET; THENCE SOUTH 89°58'38" WEST 14.97 FEET; THENCE SOUTH 00°01'22" EAST 13.73 FEET; THENCE SOUTH 89°58'38" WEST 13.79 FEET; THENCE SOUTH 00°01'22" EAST 28.75 FEET; THENCE SOUTH 89°58'38" WEST 9.26 FEET; THENCE NORTH 00°01'22" WEST 0.50 FEET; THENCE SOUTH 89°58'38" WEST 11.46 FEET; THENCE NORTH 00°01'22" WEST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 5.71 FEET; THENCE SOUTH 00°01'22" EAST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 20.47 FEET TO A POINT ON THE WEST LINE OF SAID LOT 4; THENCE NORTH 00°01'31" EAST ALONG SAID WEST LINE 79.42 FEET TO THE POINT OF BEGINNING),

IN COOK COUNTY, ILLINOIS.

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Exhibit B-2

Legal Description of The Retail Parcel

RETAIL PARCEL 1

THAT PART OF LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LA SALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +28.29 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: **BEGINNING** AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE THEREOF 66.04 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00°01'31" WEST ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 79.42 FEET; THENCE SOUTH 89°58'38" WEST 6.85 FEET; THENCE NORTH 00°01'22" WEST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 7.25 FEET; THENCE NORTH 00°01'22" WEST 14.49 FEET; THENCE SOUTH 89°58'38" WEST 8.75 FEET; THENCE SOUTH 00°01'22" EAST 19.70 FEET; THENCE SOUTH 89°58'38" WEST 18.12 FEET; THENCE SOUTH 00°01'22" EAST 17.24 FEET; THENCE SOUTH 89°58'38" WEST 13.94 FEET; THENCE SOUTH 00°01'22" EAST 0.83 FEET; THENCE SOUTH 89°58'38" WEST 17.02 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°02'28" WEST ALONG SAID WEST LINE 97.14 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

RETAIL PARCEL 1A

THAT PART OF LOT 1 (EXCEPT THE SOUTH 2 FEET THEREOF) IN MAJOR'S SUBDIVISION OF SUB-LOTS 4, 5, 6 AND 8 AND THE WEST 15 FEET OF LOT 9 (EXCEPTING THEREFROM THAT PART OF SAID LOTS 6 AND 8 TAKEN FOR LA SALLE STREET) IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +1.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: **BEGINNING** AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE THEREOF 43.52 FEET; THENCE SOUTH 00°01'22" EAST 27.44 FEET; THENCE NORTH 89°58'38" EAST 0.48 FEET; THENCE SOUTH 00°01'22" EAST 22.56 FEET; THENCE SOUTH 89°58'38" WEST 7.68 FEET; THENCE SOUTH 00°01'22" EAST 2.13 FEET; THENCE SOUTH 89°58'38" WEST

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9.11 FEET; THENCE NORTH 53°17'21" WEST 0.85 FEET; THENCE SOUTH 89°58'38" WEST 1.69 FEET; THENCE NORTH 00°01'22" WEST 22.29 FEET; THENCE SOUTH 89°58'38" WEST 6.09 FEET; THENCE NORTH 00°01'22" WEST 8.46 FEET; THENCE SOUTH 89°58'38" WEST 18.75 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°02'28" WEST ALONG SAID WEST LINE 20.89 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

RETAIL PARCEL 2

THAT PART OF LOTS 4 AND 5 OF ASSESSOR'S DIVISION OF BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, COOK COUNTY, ILLINOIS, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT; THAT PART OF SAID TRACT BEING DESCRIBED AS THAT PART THEREOF LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +28.29 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.21 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 89°59'53" EAST ALONG THE NORTH LINE OF LOTS 4 AND 5 A DISTANCE OF 75.56 FEET TO THE NORTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 00°04'17" EAST ALONG THE EAST LINE THEREOF 37.41 FEET; THENCE SOUTH 89°58'38" WEST 14.97 FEET; THENCE SOUTH 00°01'22" EAST 13.73 FEET; THENCE SOUTH 89°58'38" WEST 13.79 FEET; THENCE SOUTH 00°01'22" EAST 28.75 FEET; THENCE SOUTH 89°58'38" WEST 9.26 FEET; THENCE NORTH 00°01'22" WEST 0.50 FEET; THENCE SOUTH 89°58'38" WEST 11.46 FEET; THENCE NORTH 00°01'22" WEST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 5.71 FEET; THENCE SOUTH 00°01'22" EAST 5.59 FEET; THENCE SOUTH 89°58'38" WEST 20.47 FEET TO A POINT ON THE WEST LINE OF SAID LOT 4; THENCE NORTH 00°01'31" EAST ALONG SAID WEST LINE 79.42 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Exhibit C

Survey of Property Legally Describing
the Hotel Parcel and the Retail Parcel

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

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CHICAGO GUARANTEE SURVEY COMPANY
 A Division of
First Chicago Title Insurance Company
 100 North Dearborn Street, Chicago, Illinois 60610
 Telephone: (312) 233-8000

ALTA / ACSM Land Title Survey
 TAX DIVISION
 (SEE RELEVANT PARCELS FOR PARCELS, SECURITY AND LOCAL DESCRIPTIONS BY SEPARATE TITLED PARCELS)

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Office

2014-2000-001

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CHICAGO GUARANTEE SURETY COMPANY

PLCS Corporation

Chicago, Illinois

100 West Madison Street, Suite 1000

Chicago, Illinois 60602

ALTA / ACSM Land Title Survey

Law Division

GRAPHIC SCALE

1" = 100'

0 100 200 300 400 500

Block 115
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. La Salle Street, on the south by S. Dearborn Street, and on the west by S. La Salle Street. The block is divided into several lots, and is shown on the attached map.

Block 116
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. Dearborn Street, on the south by S. La Salle Street, and on the west by S. Dearborn Street. The block is divided into several lots, and is shown on the attached map.

Block 117
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. Dearborn Street, on the south by S. La Salle Street, and on the west by S. Dearborn Street. The block is divided into several lots, and is shown on the attached map.

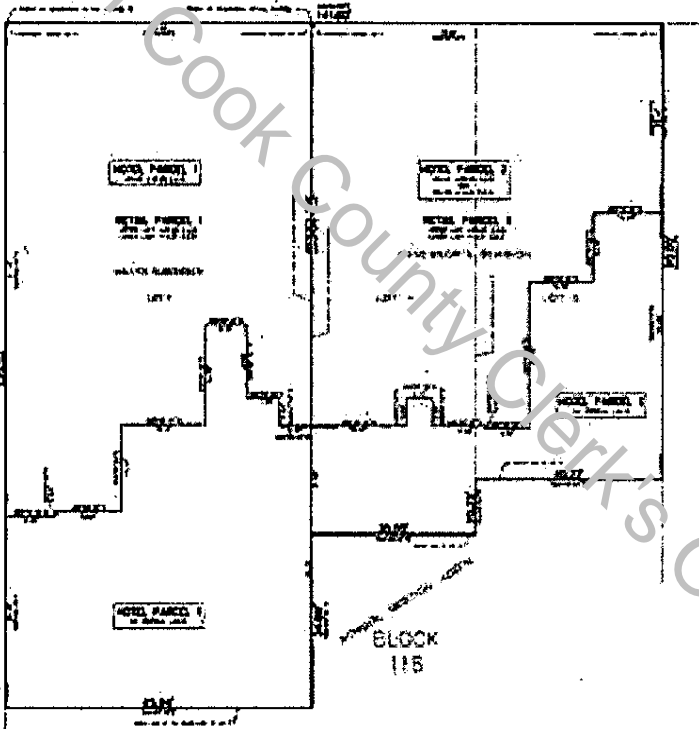
Block 118
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. Dearborn Street, on the south by S. La Salle Street, and on the west by S. Dearborn Street. The block is divided into several lots, and is shown on the attached map.

Block 119
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. Dearborn Street, on the south by S. La Salle Street, and on the west by S. Dearborn Street. The block is divided into several lots, and is shown on the attached map.

Block 120
 This block is a portion of a larger block of land, and is bounded on the north by W. Madison Street, on the east by S. Dearborn Street, on the south by S. La Salle Street, and on the west by S. Dearborn Street. The block is divided into several lots, and is shown on the attached map.

W. MADISON STREET

S. LA SALLE STREET



CHICAGO GUARANTEE SURETY COMPANY
 PLCS Corporation
 Chicago, Illinois
 100 West Madison Street, Suite 1000
 Chicago, Illinois 60602
 ALTA / ACSM Land Title Survey
 Law Division
 2014-20008-001