

# UNOFFICIAL COPY

Doc#: 2024162232 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 08/28/2020 03:53 PM Pg: 1 of 36

This instrument prepared by and  
after recording, return to:

Bruce A. Salk  
Cohen, Salk & Huvar, P.C.  
630 Dundee Road, Suite 120  
Northbrook, IL 60062

PIN: 07-07-400-060-0000; 07-07-400-061-  
0000; 07-07-400-062-0000; 07-07-400-063-  
0000; 07-07-400-064-0000

Address: 1721 ~~171~~ Moon Lake Blvd.,  
Hoffman Estates, Illinois

For Recorder's Office Use Only

This **DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS** ("Declaration") is made as of the 30<sup>th</sup> day of May, 2020, by **POPLAR CREEK OFFICE PLAZA L.L.C.**, an Illinois limited liability company ("PCOP") and **POPLAR CREEK PROPERTIES, L.L.C.**, an Illinois limited liability company ("PCP") (PCOP and PCP are collectively, the "Declarant").

## WITNESSETH:

Whereas, PCOP is the owner of the real property commonly known as 1721 Moon Lake Blvd., Hoffman Estates, Illinois, and which is legally described on Exhibit "A" attached hereto ("PCOP Property"). The PCOP Property is currently improved with an office building; and

Whereas, PCP is the owner of real property adjacent to the PCOP Property located in Hoffman Estates, Illinois, and which is legally described on Exhibit "B" attached hereto (the "PCP Property"); and

Whereas, PCOP is also the owner of real property located in the same subdivision as the PCOP Property and the PCP Property, located in Hoffman Estates, Illinois, and which is legally described on Exhibit "C" attached hereto (the "Detention Parcel") (the PCOP Property, the PCP Property and the Detention Parcel are hereinafter collectively referred to as the "Property" or the "Office Park"); and

Declarant desires to establish for the mutual benefit of the Property, all present and future owners thereof and those other parties defined hereafter, certain easements, rights and privileges and certain burdens, restrictions and obligations with respect thereto; and

# UNOFFICIAL COPY

Whereas, Declarant desires and intends that the Property shall be subject to the rights, easements, privileges, uses, burdens, restrictions and obligations hereinafter set forth.

NOW, THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, hereby declares as follows:

## ARTICLE I. Definitions

The following terms used in this Declaration shall have the following meanings. Other terms are defined elsewhere in this Declaration.

1.1 Building means a building constructed on a Parcel and any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

1.2 Common Area means the Common Drive, the Detention Parcel and the Entrance Signs that are available for the common use and enjoyment of the Owners and Permittees but does not include any parking areas.

1.3 Common Drive means the entrances, exits and driveways located in the Common Area that provide the main circulation route into and around the Property, as identified as such on the Site Plan, and lighting facilities installed specifically on or near the Common Drive (and designed for its illumination), together with all replacements, additions or alterations thereto.

1.4 Common Improvements means the Common Drive, Common Stormwater Facilities, Common Landscaping and Entrance Signs.

1.5 Common Landscaping means the landscaping installed and maintained around the Detention Pond located on the Detention Parcel.

1.6 Common Maintenance means the Maintenance of the Common Improvements to be performed from time to time by the Responsible Owner.

1.7 Common Stormwater Facilities means the detention facility located on the Detention Parcel and related rims, inlets, flumes, manholes, facilities, control structures, access paths and drives and all associated landscaping located on the Detention Parcel, and all storm sewers now or hereafter located on the Property and which drain to the Detention Pond.

1.8 Construction Work means all work performed in the construction, repair, replacement, alteration or expansion of any Buildings or improvements on a Parcel, but shall not include painting or ordinary Maintenance of any Building or improvements.

1.9 Declaration means this Declaration of Easements, Covenants and Restrictions, which is to be recorded in the Recorder's Office, as the same may be amended in accordance with its terms below.

# UNOFFICIAL COPY

- 1.10 Detention Parcel means Lot 5 within the Subdivision.
- 1.11 Detention Pond means the detention pond located on the Detention Parcel which provides detention for storm water from all of the other Parcels.
- 1.12 Entrance Signs means (i) the ground sign installed at the Northwest corner of Lot 4 within the Subdivision and maintained by the Responsible Owner for identifying the Office Park, and (ii) any ground sign hereafter installed at the Southeast corner of the Property and maintained by the Responsible Owner for identifying the Office Park, together with all replacements, additions or alterations thereto, as authorized by the Master Sign Plan.
- 1.13 Ground Tenant means any Person who is a ground lessee of a Parcel and whose interest as such is disclosed in a memorandum of lease or similar instrument recorded in the Recorder's Office.
- 1.14 Improved Parcel means any Parcel (other than the Detention Parcel) which is improved with one or more substantially completed Buildings, whether occupied or not.
- 1.15 Laws means all governmental laws, codes, regulations and ordinances applicable to the Property or any part thereof, including zoning, subdivision, and property maintenance codes of the Village, as the same may be amended, modified, restated or created from time to time.
- 1.16 Maintenance means and includes cleaning, refurbishing, repair (whether ordinary or extraordinary), restoration, or non-capital and capital replacement, as required to keep the item in question in good order and condition, normal wear and tear excepted, and as required by applicable laws;
- 1.17 Maintain means to clean, refurbish, repair or replace, as the context may allow or require.
- 1.18 Master Sign Plan means the master plan in effect from time to time that has been approved by the Village to govern the number, size, location, appearance and other characteristics of signage allowed at the Office Park.
- 1.19 Mortgage means any mortgage or trust deed encumbering any Parcel.
- 1.20 Mortgagee means the holder or beneficiary, as applicable, of any Mortgage.
- 1.21 Occupant means any Person from time to time entitled to the use and occupancy of any portion of a Building under an ownership right or any lease, sublease, license, concession or similar agreement, including, without limitation, any Ground Tenant.
- 1.22 Owner means any Person who or which is the record owner of the fee simple title to a Parcel or any portion thereof, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Parcel.

# UNOFFICIAL COPY

1.23 Owner Parties means, for any Owner, such Owner (and if requested by such Owner, such Owner's Mortgagees) and their respective agents, employees, shareholders, officers, directors, managers and members.

1.24 Parcel means a lot of record resulting from the lawful subdivision of the Property.

1.25 Permittee means all Occupants and the officers, directors, managers, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of the Occupants insofar as their activities related to the intended use of the Office Park. Persons engaged in civic, public or political activities within the Office Park shall not be considered Permittees, including those engaged in any of the following activities: exhibiting any placard, sign or notice; distributing any circular, handbill, placard or booklet; soliciting memberships or contributions for private, civic, public, charitable or political purposes; parading, picketing or demonstrating; or failing to follow regulations established pursuant to this Declaration relating to the use and enjoyment of the operation of the Common Area.

1.26 Person means any individual, partnership, firm, association, corporation, limited liability company, trust, or other form of business or governmental entity.

1.27 Pro Rata Share of any Owner of an Improved Parcel means a fraction, the numerator of which is the gross land area of such Owner's Improved Parcel, and the denominator of which is the gross land area of all of the Improved Parcels (excluding the Parcel on which the Detention Pond is located), as reasonably determined by the Responsible Owner.

1.28 Provider Utilities means utility services, lines and equipment that are owned, maintained, repaired and replaced by the Village, a public utility company or a private service provider.

1.29 Recorder's Office means the recorder of deeds for Cook County, Illinois or any successor office thereto.

1.30 Reserved Area means the area of any Parcel on which a Building is located or on which improvements are located that are integral to the operation of the Building on such Parcel and serve only such Parcel. Reserved Area includes, by way of example, any portion of a Parcel used for parking, designated for use as a drive-through lane, a free-standing directional or a trash corral or enclosure.

1.31 Responsible Owner means the Owner of the PCOP Property, or any substitute Owner who serves as Responsible Owner, as provided in this Declaration.

1.32 Separate Utilities means those Utilities (other than Common Stormwater Facilities) which provide the applicable service to one or more (but not all) of the Parcels. For purposes of this Declaration, the catch basins, storm drains and portions of storm sewers located within a Parcel shall be considered a Separate Utility for that Parcel.

# UNOFFICIAL COPY

1.33 **Site Plan** means the master site plan for the Property in effect from time to time as approved by the Village and governing the location of Buildings and other improvements on the Property. A reduced version of the Site Plan in effect as of the date of this Declaration is attached hereto as Exhibit "D". The Responsible Owner shall record a supplement to this Declaration in the Recorder's Office whenever the Village approves an amended Site Plan.

1.34 **Subdivision** means the Poplar Creek Office Plaza Subdivision pursuant to that certain Plat of Subdivision recorded September 17, 1993 as Document No. 93747914 with the Cook County Recorder, Illinois.

1.35 **Utilities** means any electric, gas, water, sanity sewer, storm sewer, communications or other utility services, together with all lines, wires, cables, boxes, flues, conduits, pipes, pedestals, vaults, pumps, equipment, connectors, structures and facilities therefor, and all replacements, additions and alterations thereof. Utilities shall also include all retention or detention ponds or basins (including the Detention Pond) and related rims, inlets, flumes, manholes, facilities and control structures as well as irrigation facilities, lines and equipment.

1.36 **Utilities Plan** means the final approved engineering plans for the Property as a whole and for each individual Parcel, as the same from time to time may be amended with the consent of the Village, showing location of all Utilities.

1.37 **Village** means the Village of Hoffman Estates, Illinois.

## ARTICLE II. Easements

2.1 **Reciprocal Easements.** Subject to the restrictions set forth herein, Declarant does hereby establish, grant and reserve, for the benefit of all Owners and Ground Tenants and each of the Parcels within the Office Park, the following mutual, reciprocal and non-exclusive easements:

(a) An easement for the purpose of pedestrian and vehicular access, ingress and egress, upon, over, across and through the Common Drive. The initial general location of the Common Drive is shown on the Site Plan. Declarant reserves to the Responsible Owner the right to control and manage the Common Drive and to make minor modifications to the location, size, area, level and arrangement of the Common Drive, with the consent of the Village, provided that the Responsible Owner shall not alter the location of Common Drive in any manner that would materially alter the location of the entrances to the Property from Moon Lake Blvd. or materially alter the curb cut entrances to each Parcel as approved by the Village, without the prior written consent of each affected Owner or Ground Tenant whose Parcel has frontage on Moon Lake Blvd., which consent shall not be unreasonably withhold or delayed. Nothing contained in this Declaration shall grant an easement for parking, ingress, or egress over any Parcel, other than for ingress and egress over the Common Drive.

(b) An easement over, under, upon and through the unimproved areas of each Parcel (meaning those areas on each Parcel which are not improved with Buildings or other

# UNOFFICIAL COPY

permanent structures, but improvements shall not include driveways and parking areas; such unimproved areas being hereinafter referred to as the “Unimproved Areas”) for the purpose of permitting the Owners and Utilities providers to construct, install, operate, tie into, connect with, transmit through, use and Maintain the Separate Utilities, as delineated on the Utilities Plan, and for drainage, detention and discharge, by gravity or otherwise, of all surface waters and runoff from a Parcel into the nearest catch basins, sewers or storm drains and thence into the Detention Pond and other any detention or retention ponds, zones, underground storage vaults or other facilities located on and serving the entire Property. Notwithstanding the preceding provisions of this Section 2.1(b), Declarant reserves to the Responsible Owner the right and obligation to Maintain the Common Stormwater Facilities and grants to the Responsible Owner easements for temporary access and construction to enter upon any Parcel in order to perform such Maintenance. Declarant reserves to the Responsible Owner the right to manage and control the Common Stormwater Facilities and to modify the location, size, area, level and arrangement of the Common Stormwater Facilities with the consent of the Village, provided that the Responsible Owner shall not materially alter the location of Common Stormwater Facilities nor materially alter the size, dimensions, components or capacity thereof to the extent that such alterations would materially and adversely affect the use and operation of the Building and improvements of another Owner, without the prior written consent of the affected Owner and its Ground Tenant, if any.

2.2 Entrance Sign Easement. Declarant does hereby establish, grant and reserve, for the benefit of all Owners and each of the Parcels within the Office Park, an easement over, under, upon and through that portion of Lot 4 within the Subdivision shown on as the “Parcel 4 Sign Area” for the construction, operation and Maintenance of the Entrance Signs by the Responsible Owner.

2.3 Restrictions Governing Use of Easements Generally.

(a) Subject to the restrictions set forth in this Declaration, each of the reciprocal easements hereinabove granted shall be for the benefit of each Owner and each Owner’s Ground Tenants, for the use and enjoyment of the easement by such Owner, its Ground Tenant and their Permittees. The term of each of the easements reserved or granted herein shall be as set forth in Section 13.1 below. The use of each easement granted hereunder is limited to the purpose for which it is granted. Unless specifically stated to the contrary, the Owner whose Parcel is burdened by any easement granted herein reserves the right to use the Owner’s servient tenement for the use stated in the easement and for any other use not inconsistent with use of the easement by the benefited Owner, its Ground Tenant, if any, and their Permittees.

(b) Each of the Owners, Ground Tenants and their Permittees shall use and enjoy the easements hereinabove granted in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business at any time being conducted on the Parcels, including, without limitation, access to and from said business, and the receipt or delivery of good and services in connection therewith; provided, however, any vehicle with more than two axles making such deliveries may be required to comply with requirements for

# UNOFFICIAL COPY

such delivery vehicles from time to time adopted by the Responsible Owner when reasonably necessary to promote safe and efficient circulation within the Office Park.

(c) No Owner shall alter or permit to be altered the surface area grades and the portion of the surface water drainage and detention system for the Office Park located on its Parcel, if such alteration will materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

(d) Except during periods of construction when permitted by this Declaration or as otherwise required by applicable law, no walls, fences or barriers of any sort or kind shall be constructed or maintained in any Common Areas which shall prevent or impair the use or exercise of any of the easements granted herein; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed as long as the access driveways to the parking areas of the Office Park are not closed or blocked and the traffic circulation pattern of the Common Areas, as depicted in the Site Plan, is not changed or affected in any way, unless the prior written approval of the Responsible Owner is first obtained.

## 2.4 Restrictions Governing Utilities.

(a) No Owner shall cause the Utilities serving any other portion of the Property to be disconnected or shutdown except in the case of an emergency, to exceed their capacity, or to be used in a manner inconsistent with their purpose, without the prior written consent of all affected Owners.

(b) An Owner seeking to construct on the Unimproved Area of another Parcel any Separate Utility shall obtain the prior written approval of the Owner and its Ground Tenant, if any, over or under whose Parcel the same is to be located, which request for approval shall be responded to within twenty-one (21) days from receipt and shall not be unreasonably withheld or delayed. Any work performed on existing or future Utilities outside of such Owner's Parcel shall meet the standards of Section 2.4(d) below. If requested by any Utility provider or the affected Owners upon completion of construction of such Utilities, the Owners of the Parcels affected thereby shall join in the execution of an easement agreement, in recordable form, appropriately identifying the type and location of the respective Utility. Such easement agreement shall specify that any Separate Utilities not Maintained by the appropriate public utility shall be Maintained by the Owner(s) requesting and benefited by the Separate Utility.

(c) Each Owner shall have the right at any time to relocate any Separate Utilities or Provider Utilities located on its Parcel, provided that such relocation shall be performed only after twenty-one (21) days notice of such Owner's intention to so relocate shall be given to the Owners of any Parcels benefiting from such Utilities and their Ground Tenants, if any, and such relocation work meets the standards of Section 2.4(d) below.

(d) Any Owner seeking to construct, install, use, Maintain or relocate Utilities shall ensure that such work (i) will not interfere with or diminish the Utility services to the benefited Parcels; (ii) will not reduce or unreasonably impair the usefulness or function of

# UNOFFICIAL COPY

such Utility; (iii) will be performed without cost or expenses to the Owners and Ground Tenants of the benefited Parcels; (iv) the new line will be functioning prior to discontinuance of the existing service; (v) will be completed using materials and design standards which equal or exceed those originally used; (vi) will be performed in accordance with the standards governing construction on an Owner's Parcel as set forth below; (vii) will not be commenced during the months of November, December or January, unless such work is necessitated by an emergency; (viii) will have been approved by the Utility provider or the appropriate governmental bodies or agencies having jurisdiction; and (ix) will be located below the ground level of surface of the Parcels (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels).

(c) If Utility work is required for the benefit of only one of the Parcels, it shall be performed at that Owner's expense. If any such work is required for the benefit of more than one Owner, it shall be performed at the expenses of all of the Owners benefited in proportion to each Owner's share of the total area of the Parcels benefited. If the Utility Work is required for a Utility that benefits the Common Stormwater Facilities, then such work shall be deemed Common Maintenance and paid for pursuant to Article III.

2.5 No Easements Beyond Office Park. No Owner shall grant an easement of the type set forth in this Article II for the benefit of any property not within the Office Park without the prior written consent of the Responsible Owner. However, the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel (i) to governmental authorities or (ii) to public utilities for the installation and maintenance of Provider Utilities.

## ARTICLE III.

### Maintenance by Responsible Owner

3.1 Duties of Responsible Owner. The Responsible Owner shall perform or caused to be performed the Common Maintenance, in order that the Common Improvements shall be Maintained in a sightly, functional, safe condition and good state of repair and in compliance with all Laws and the provisions of this Declaration. The standards imposed on Owners for Maintaining the drives, parking areas, landscaping, lighting and signage on their Parcels set forth in Section 4.1 below shall similarly govern the Maintenance of the Common Improvements. The Responsible Owner may hire companies affiliated with it to perform the Common Maintenance, to the extent that the rates charged by such companies are competitive with those of the companies furnishing similar services in the Chicago metropolitan area. Each Owner hereby grants to the Responsible Owner a license to enter upon its Parcel for the purpose of performing the Common Maintenance, provided the Responsible Owner shall perform such Common Maintenance in a manner that minimizes interference with the conduct of business or intended use of the Common Areas. The Responsible Owner shall also keep in force the insurance coverages as specified for the Responsible Owner in Article VII. The Responsible Owner shall expend only such funds as are reasonably necessary for performing the Common Maintenance and obtaining such insurance in keeping with the standards set forth herein.

3.2 Reimbursement of Responsible Owner.



# UNOFFICIAL COPY

(a) Each Owner of any Improved Parcel is liable for its Pro Rata Share of the costs expended by the Responsible Owner, as determined by the Responsible Owner in its reasonable discretion, to perform the Common Maintenance (“Common Maintenance Costs”) plus the premiums for insurance coverages that the Responsible Owner is required to keep in force. The Responsible Owner is permitted to include with the Common Maintenance Costs an administration fee payable to the Responsible Owner equal to five percent (5%) of such costs; provided, however, the administration fee shall not be charged to the extent the Responsible Owner contracts all or a substantial part of the Common Maintenance to a third party property management company; and the administration fee shall not be computed on, and Common Maintenance Costs shall not include: (i) costs to clean up or repair the Common Drive resulting from construction, maintenance or repair of Buildings (a cost which shall instead be charged to the benefited Owner); (ii) real property taxes or assessments, other than with respect to the Detention Parcel; (iii) any profit, administrative or overhead costs of the Responsible Owner; (iv) amounts reimbursed from insurance proceeds, condemnation awards or under any contractor warranty; (v) depreciation, interest, carrying charges or debt service; and (vi) utility charges for the Common Areas where such charges (e.g., for lighting) are billed separately to any Building.

(b) Annual Estimate; Payment of Pro Rata Share. The Responsible Owner shall reasonably estimate, on or about November 1<sup>st</sup> of each year, each Owner of an Improved Parcel’s Pro Rata Share of Common Maintenance Costs for the ensuing calendar year and shall provide such estimate to each Owner. The estimate shall identify costs estimates for each category of expenses, including capital expenditures. If an item of Common Maintenance is to be accomplished in phases, then the estimate shall identify the cost attributable to each year and the anticipated cost and timing of each phase. Each Owner of an Improved Parcel shall pay its Pro Rata Share of estimated Common Maintenance Costs on the first day of February of each calendar year (unless the Responsible Owner, in its discretion, requests payment in equal monthly installments). All payments of Common Maintenance Costs shall be delivered to the Responsible Owner at the address for notices provided by the Responsible Owner for such purpose. The Responsible Owner shall pay its Pro Rata Share of Common Maintenance Costs in the same manner and for the same expenditures as the other Owners of an Improved Parcel. All Common Maintenance Costs shall be paid in such currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and shall be paid by check or wire transfer. If a Parcel becomes an Improved Parcel during a calendar year, the Common Maintenance Costs due from the Owner of such Improved Parcel for such calendar year shall be prorated.

(c) Supplemental billing. The Responsible Owner shall use its diligent good faith efforts to perform its Maintenance obligations hereunder in accordance with its most recent estimate, but the Responsible Owner shall have the right to make necessary or emergency repairs or expenditures in good faith to prevent injury or damage to person or property (even if the costs thereof cause the Common Maintenance Costs to exceed the estimate given for such year) and to issue a supplemental billing to each Owner. If the Responsible Owner makes any such necessary or emergency repairs, it shall advise the other Owners as soon as reasonably possible of the corrective measures taken and the cost thereof, which shall be

# UNOFFICIAL COPY

included in Common Maintenance Costs and each Owner of an Improved Parcel shall remit payment of its Pro Rata Share of such Common Maintenance Costs to the Responsible Owner within thirty (30) days after receipt of the Responsible Owner's notice.

(d) **Annual Statement.** As soon as reasonably feasible after the end of each calendar year, the Responsible Owner shall prepare and deliver to each Owner of an Improved Parcel a statement showing the Owner's Pro Rata Share of actual Common Maintenance Costs for such calendar year. Within thirty (30) days after its receipt of the aforementioned statement, each Owner of any Improved Parcel shall pay to the Responsible Owner, or the Responsible Owner shall credit against the next payment or payments due from such Owner, as the case may be, the difference between the Owner of an Improved Parcel's Pro Rata Share of actual Common Maintenance Costs for the calendar year then ended, and the Owner of an Improved Parcel's estimated payments received during such year. The Responsible Owner's failure to adhere strictly to the deadlines for providing the notices required by this Section shall in no way relieve the Owners of an Improved Parcel of their respective obligations.

(e) **Inspection of Records.** Each Owner shall have the right to inspect, at reasonable times and in a reasonable manner, during the ninety (90) day period following the delivery of the Responsible Owner's annual statement, such of the Responsible Owner's books of account and records as pertain to and contain information concerning Common Maintenance Costs in order to verify the amounts thereof. Such inspection shall take place at the Responsible Owner's office. Such inspection shall be conducted only by an Owner or such Owner's accountant. Each Owner shall provide the Responsible Owner with a copy of its findings within sixty (60) days after completion of the audit. Such Owner's failure to exercise its rights hereunder within said ninety (90) day period shall be deemed a waiver of its right to inspect or contest the method, accuracy or amount of the Common Maintenance Costs for the period covered by the statement. In the event of any undisputed error, the Responsible Owner shall make a correcting payment in full to such Owner within thirty (30) days after the determination of the amount of such error if such Owner overpaid such amount, and such Owner shall pay the Responsible Owner within thirty (30) days after the determination of such error if such Owner underpaid such amount. If within the period aforesaid, such Owner provides the Responsible Owner with its notice disputing the correctness of the statement, and if such dispute shall have not been settled by agreement, such Owner may submit the dispute to a reputable firm of independent certified public accountants selected by such Owner and approved by the Responsible Owner, such approval not to be unreasonably withheld or delayed, and the decision of such accountants shall be conclusive and binding upon the parties. If such accountant decides that there was an error, the Responsible Owner will make correcting payment if such Owner overpaid such amount, and such Owner shall pay the Responsible Owner if such Owner underpaid such amount. In the event the amount of the overcharge by the Responsible Owner exceeds the correct charge amount by four percent (4%) or more, then the Responsible Owner shall reimburse the Owner for the reasonable and actual audit costs incurred by the Owner in reviewing documentation of the contested invoice. Notwithstanding the foregoing, each Owner of an Improved Parcel shall remain obligated to pay the amount when due under the invoices, subject to the right to review and object after the payment has been paid.

# UNOFFICIAL COPY

3.3 **Indemnity Against Liens.** The Responsible Owner agrees to protect, indemnify and hold harmless each Owner from and against all claims, including actions or proceedings brought thereon, and all costs, losses, expenses and liabilities (including reasonable attorneys' fees and costs of suit) arising out of any mechanics' liens arising from or as a result of the Maintenance by the Responsible Owner of the Common Improvements. If any Parcel shall become subject to any such lien, then the Responsible Owner shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required to obtain such release and discharge.

## ARTICLE IV. **Maintenance by Owners**

4.1 **Maintenance on Each Parcel.** Except as provided for herein, each Owner shall, at its own cost and expense, Maintain its Parcel, Buildings, improvements and signage, in a sightly, functional, safe condition and good state of repair and in compliance with all Laws and the provisions of this Declaration. All improvements and Maintenance to the Common Area on each Parcel shall be made so as to preserve the architectural and aesthetic harmony of the Office Park as a whole and with materials at least equal to the quality of materials being replaced or repaired. Following initial construction of a Building on a Parcel, such Maintenance on a Parcel shall include, without limitation, the following:

(a) **Drives and Parking Areas.** Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing, all in a manner which continues the layout thereof as shown on the Site Plan.

(b) **Debris, Refuse and Snow Removal.** Periodic removal of all papers, debris, filth, refuse, ice and snow (2" or more on surface), including daily cleaning and broom sweeping to the extent necessary to keep the Common Areas in a good, clean and orderly condition and unobstructed.

(c) **Non-Occupant Signs and Markers.** Maintaining any appropriate directional, stop or handicapped parking signs; restriping parking areas and drive lanes as necessary to continue parking space designation and traffic direction, all in a manner which continues the layout thereof as shown on the Site Plan; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.

(d) **Sidewalks.** Maintaining, cleaning and repairing all sidewalks and pedestrian crossings.

(e) **Landscaping.** Maintaining all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed-free, Maintaining landscape planters, including those adjacent to the exterior walls of Buildings, and irrigation systems to satisfy governmental water allocation or emergency requirements.

# UNOFFICIAL COPY

(f) **Buildings**. Maintaining and repairing when necessary, the Buildings and facades and any perimeter walls and retaining walls in good condition and state of repair, including any exterior shipping/receiving dock, any truck ramp or truck parking area and any refuse, compactor or dumpster area.

(g) **Loading and Trash Enclosures**. Maintaining in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area and any refuse, compactor, or dumpster area located on its Parcel.

(h) **Separate Utilities**. Maintaining, repairing and replacing, when necessary all Separate Utilities not dedicated to the public or conveyed to any public or private utility.

(i) **Signage**. Maintaining, repairing and replacing, when necessary, any signage thereon in good repair and condition (provided the Responsible Owner shall Maintain the Entrance Signs).

4.2 **Unimproved Parcels**. Nothing in this Declaration shall obligate any Owner to commence construction of a Building on its Parcel, but once construction has commenced, then the Building and improvements shall either be complete or torn down. Until such time as a Building is constructed on any Parcel, the Owner thereof shall seed any undeveloped building area located on it Parcel to the extent required by applicable Laws and to ensure an attractive appearance, free from weeds, blowing sand and dirt.

## ARTICLE V.

### Use Covenants – Construction

5.1 **Permitted Uses**. Each Parcel shall be used solely for lawful purposes in conformance with all restrictions imposed by all applicable Laws.

5.2 **Compliance with Laws**. Each Owner, without cost or expense to any other Owner, shall promptly comply or cause compliance with all Laws applicable to Buildings and improvements located on its Parcel (including within the Common Areas on its Parcel); provided however that each Owner shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or application of any such Law and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would render the Office Park, or any portion thereof, liable to foreclosure, involuntary sale or loss, or result in involuntary closing of any business conducted thereon, or subject any other party to civil or criminal liability, in which case the affected party shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with the relevant Law. If compliance with such relevant Law would prevent the Owner to whose Parcel such Law applies from performing any of its obligations under this Declaration and such Owner does not contest the applicability or validity of such Law, then another Owner may contest the same, at its expense in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the Owner whose Parcel is affected shall delay compliance in accordance with and to the extent required

# UNOFFICIAL COPY

by the provisions set forth above. Each non-contesting Owner shall reasonably cooperate to the fullest extent necessary with any contesting Owner in any proceeding undertaken pursuant to this provision, including execution of necessary documents or consents to such contest in form and content reasonably acceptable to each non-contesting Owner, provided all costs and expenses incurred with respect to such cooperation shall be paid by the contesting party and provided, further, that an Owner or its Parcel shall not thereby incur any civil or criminal liability.

5.3 No Charges for Use of Common Areas. Except as otherwise expressly provided in this Agreement or to the extent required by law, no Permittee shall be charged for the right to use the Common Area.

5.4 Right to Construct – Conformity to Site Plan. Each Owner shall have the right, from time to time, without obtaining the consent or approval of any other Owner, to construct a Building and other improvements on its Parcel, subject to the provisions of this Declaration.

5.5 Building Standards. All Buildings and improvements shall meet all of the standards of the Village fire code and all other Laws (subject to variances granted by the Village) to the extent applicable to such Buildings and improvements, including without limitation, any building heights or setbacks, and shall be constructed in such a manner as not to adversely affect the fire rating as determined by local governing agencies of any improvements built upon any Parcel. No improvements shall be built in such a manner as to adversely affect the structural integrity of any other improvements on the Parcels.

5.6 Signage. Each Owner shall have the right to have only such signage on its Parcel as conforms to the Master Sign Plan and is in accordance with all Laws, and each Owner shall be solely responsible for the cost to Maintain its signage. The Master Sign Plan may be amended upon application to the Village, with the consent of the Responsible Owner.

5.7 Construction Requirements.

(a) Each Owner agrees that all construction activities performed by it (or at its direction) within the Office Park shall be performed in compliance with all applicable Laws. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner. All work performed in the construction, repair, replacement, alteration or expansion any Buildings or improvements shall be performed as expeditiously as possible.

(b) Each Owner (and the Responsible Owner) performing any Construction Work on its Parcel (or with respect to the Responsible Owner, in the Common Areas) shall (i) take all necessary measures to minimize any disruption or inconvenience caused by such work, (ii) repair at its own cost and expense any and all damage to the Common Areas caused by such work, (iii) restore the affected portion of any affected Parcel to a condition which is equal to or better than the condition which existed prior to the beginning of such work, excluding Construction Work that involves complete removal of Buildings or improvements as permitted herein, (iv) at all times maintain adequate vehicular access, ingress and egress over the Common Drive (or portions of Common Areas set aside for such temporary access) and

# UNOFFICIAL COPY

shall not unreasonably interfere, obstruct or delay: access to or from the other Parcels, or any part thereof, to or from any public or private right-of-way; vehicular parking in that portion of the Common Area on another Parcel serving as parking area; or the receipt or delivery of goods and services by any business on any Parcel, including, without limitation, access to the Buildings, and (v) at all times store (or cause to be stored) all construction equipment, material and vehicles utilized in connection with any construction on its Parcel within the area on its Parcel on which construction is occurring, provided that such area is either on or around the building pad for its Building or is on such portion of the Common Area on its Parcel that will not unreasonably interfere with access between such Parcel and the other areas of the Office Park. All storage of materials and all parking of construction vehicles, including vehicles of workers, shall occur solely on the constructing Owner's Parcel, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Owner's Parcel.

(c) The constructing Owner agrees to protect, indemnify and hold harmless each Owner from and against all claims, including actions or proceedings brought thereon, and all costs, losses, expenses and liabilities (including reasonable attorneys' fees and costs of suit) arising out of any mechanics', materialmen's or other professional services liens arising from or as a result of any work by the constructing Owner (whether as part of its Maintenance obligation under Article IV or Construction Work under this Article V). If any Parcel shall become subject to any such lien, then the constructing Owner shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required to obtain such release and discharge.

(d) The Owners hereby grant to the other Owners a temporary license for access and passage over and across the Common Area located on the granting Owner's Parcel, to the extent reasonably necessary for such Owner to construct or Maintain its Buildings and improvements upon its Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of: (i) any business conducted by an Owner or Occupant; or (ii) the Common Area on the granting Owner's Parcel. Prior to exercising the rights granted herein, an Owner shall provide each granting Owner with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by this Declaration. The Owner shall promptly pay all costs and expenses associated with such work, shall complete such work expeditiously, and shall promptly clean and restore the affected portion of the Common Area on the granting Owner's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

## 5.8 Alterations to the Detention Pond.

(a) The existing Detention Pond was not designed or constructed with sufficient capacity to provide storm water detention for Parcels other than the PCOP Parcel. Therefore, if the Owner of a Parcel (other than the PCOP Parcel) desires to construct a

# UNOFFICIAL COPY

Building on its Parcel and such Owner's engineer determines that the Detention Pond at such time does not contain sufficient capacity to provide adequate storm water detention for such Parcel (in addition to all other then Improved Parcels) as it is proposed to be improved, then the Owner of the Parcel to be improved may modify the Detention Pond in order to add the capacity needed, all in accordance with the terms of this Section 5.8 and in accordance with all applicable Laws.

(b) No Owner shall make any alterations or additions to the Detention Pond ("Detention Pond Alterations") without the prior written consent of the Responsible Owner, which consent shall not be unreasonably withheld, delayed or conditioned. In all events, any Owner desiring to make Detention Pond Alterations shall deliver at least thirty (30) days prior notice to all other Owners and the Owner desiring to make Detention Pond Alterations shall obtain all permits or other governmental approvals prior to commencing any of such work and deliver a copy of same to Responsible Owner. All Detention Pond Alterations shall be at the sole cost and expense of the Owner making such Detention Pond Alterations and in accordance with plans and specifications which have been previously submitted to and approved in writing by Responsible Owner, and shall be installed by a licensed, insured, and bonded contractor (reasonably approved by Responsible Owner) in compliance with all applicable Laws, and all recorded matters and this Declaration. In addition, all work with respect to any Detention Pond Alterations must be done in a good and workmanlike manner and shall include a warranty for one (1) year following completion for any defective work or materials, which warranty shall be in favor of the Responsible Owner and be in such form as is reasonably approved by Responsible Owner. Responsible Owner's approval of any plans, specifications or working drawings for Detention Pond Alterations shall not create nor impose any responsibility or liability on the part of Responsible Owner for their completeness, design sufficiency, or compliance with any laws, ordinances, rules and regulations of governmental agencies or authorities. In performing the work of any such Detention Pond Alterations, the Owner causing such work performed shall have the work performed in such a manner as not to obstruct access to any Parcel or the Common Drive. The Owner desiring to perform Detention Pond Alterations shall reimburse Responsible Owner, within ten (10) days after demand, for actual legal, engineering, architectural, planning and other expenses incurred by Responsible Owner in connection with such Owner's Detention Pond Alterations, including, without limitation, costs incurred by Responsible Owner for the review of the plans and specifications. If any Owner shall make any Detention Pond Alterations, such Owner agrees to carry "Builder's All Risk" insurance, in an amount approved by Responsible Owner and such other insurance as Responsible Owner may require. The Owner making Detention Pond Alterations shall keep the Detention Parcel free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of such Owner. The Owner making Detention Pond Alterations shall, prior to construction of any and all Detention Pond Alterations, cause its contractor(s) and/or major subcontractor(s) to provide insurance as reasonably required by Responsible Owner, and such Owner shall provide such assurances to Responsible Owner, including without limitation, waivers of lien, surety company performance bonds as Responsible Owner shall require to assure payment of the costs thereof to protect Responsible Owner and the Detention Parcel from and against any loss from any mechanic's, materialmen's or other liens.

# UNOFFICIAL COPY

## ARTICLE VI.

### Taxes

Each Owner shall pay or cause to be paid all real property taxes and other assessments levied against its Parcel and the Building and other improvements thereon, and any personal property owned or leased by such Owner in the Office Park; provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same shall become due (herein, called "Taxes"). Each Owner may contest at its own expense the existence, amount or validity of Taxes levied upon its Parcel by appropriate proceedings, to the extent the same affect only such Owner's portion of the Property and so long as such contest is maintained with reasonable diligence and in good faith. At such time as the contest is concluded (allowing for appeals to the highest court), the contesting party shall pay all Taxes determined to be owing, together with all interest and penalties thereon. Notwithstanding the foregoing, each Owner of an Improved Parcel shall pay to the Responsible Party such Owner's Pro Rata Share of the real estate taxes and assessments levied against the Detention Parcel, which amounts shall be paid in estimated monthly amounts included with the assessments for Common Area Maintenance Costs.

## ARTICLE VII.

### Insurance

7.1 Liability Insurance. Each Owner shall maintain or cause to be maintained in full force and effect at all times during the term of this Declaration the following insurance:

(a) CGL Policy. Commercial general liability insurance equivalent in coverage to the Insurance Services Office (ISO) Form CG 00 01 2007 edition (or a substitute form providing equivalent coverage). Each commercial general liability policy shall contain a severability of interest provision (or equivalent coverage which would preclude the insurance company from denying the claim of any named insured because of the negligent act of any other Owner), a deductible of not more than \$100,000 per claim, and shall have not less than the following limits of liability:

<u>Coverage</u>	<u>Limits of Liability</u>
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Personal Injury/Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Defense costs shall be provided as an additional benefit and shall not be included within the limit of liability. The policy shall be endorsed so that the general aggregate limit applies separately to each project and each location. The products and completed operations aggregate shall be maintained for a minimum of one year after the final payment. An endorsement shall be attached to the policy to evidence that completed operations coverage is provided. The property damage coverage shall include explosion, collapse, and underground hazard coverage (commonly referred to as "X", "C" and "U" coverages). All such insurance



# UNOFFICIAL COPY

shall be primary and non-contributory, notwithstanding the fact that another Owner maintains liability insurance, and shall be endorsed if necessary to evidence that such coverage is primary and non-contributory.

(b) Workers Compensation; Employer's Liability. Each Owner shall carry worker's compensation insurance for their own employees in amounts as required by law and employer's liability coverage in not less than the following amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee; \$1,000,000 disease policy limit.

(c) Business Auto Policies. Each Owner shall carry business automobile liability insurance (if such Owner's vehicles are used in business on its Parcel) written on ISO form CA 00 001 (or a substitute form providing equivalent coverage) with a combined single limit of not less than \$2,000,000 for each accident. Such insurance shall cover any bodily injury, death or property damage liability arising out of the use of any covered land motor vehicle, (including owned, hired and non-owned automobiles), including physical damage comprehensive endorsement and collision coverage. Each Owner shall carry garage liability insurance if such Owner offers valet service to park motor vehicles anywhere on its Parcel.

(d) Liquor Liability. Each Owner shall carry liquor liability and dram shop insurance (if alcohol is served on such Owner's Parcel) with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence.

(e) Umbrella Liability. Umbrella liability insurance, in an amount not less than Three Million Dollars (\$3,000,000) per occurrence, providing limits above the required commercial general liability, business automobile liability, employer's liability, and liquor liability primary limits, and which shall be written on an umbrella basis in excess over and no less broad than such primary policies. The inception and expiration dates shall be the same as the CGL insurance. Coverage must "drop down" for exhausted aggregate limits under the liability coverage referenced herein. The policy shall be endorsed to provide aggregate limits on insurance for the Parcel being insured.

(f) The Responsible Owner may obtain liability insurance specifically covering its risks when performing Common Maintenance in any Common Area (including obtaining such coverage by additional premises endorsement to any policy of insurance carried by the Responsible Owner), and in such event, the Responsible Owner shall include in Common Maintenance Costs such premium costs (or allocable portion thereof in the event of an additional premises endorsement).

## 7.2 Property Insurance; Insurance During Construction.

(a) The Responsible Owner shall maintain or cause to be maintained in full force and effect at all times during the term of this Declaration an ISO commercial property "special form" policy (or coverage at least as broad), including builder's risk insurance coverage during construction, upon completion of construction, all-risk insurance coverage for physical loss or damage to the property written on a replacement cost basis, in an amount

# UNOFFICIAL COPY

at least equal to the full replacement cost (exclusive of the cost of excavation, foundations and footings) without deduction for depreciation of the Common Improvements being insured, insuring against all risks (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all risk" coverage policy).

(b) Each Owner shall maintain or cause to be maintained in full force and effect at all times during the term of this Declaration, or cause its Occupant to procure, an ISO commercial property "special form" policy (or coverage at least as broad) upon such Owner's Building and other improvements on its Parcel for the full replacement cost of improvements on the Parcel (excluding foundations, footings and excavation).

(c) Prior to commencing construction, repair or replacement of any Buildings or ancillary improvements on a Parcel, the Owner of such Parcel (or the Responsible Owner if performing work on the Common Area) shall obtain or require its contractor(s) and subcontractor(s) to procure and maintain or cause to be maintained, in full force and effect, at all times during the course of their work in, on or about the Parcel the following coverages:

(i) Commercial general liability, workers compensation, employer's liability and business automobile liability insurance written on similar ISO forms and with equivalent coverage as required herein of Owners, subject to the specific endorsements required below.

(ii) Builder's risk insurance covering loss or damage to the Buildings, structures and other improvements on such Owner's Parcel for the full replacement value of such construction (or, in the case of the Responsible Owner, covering loss or damage to the Common Improvements for the full replacement value of such construction).

**7.3 Endorsements.** All policies of liability insurance (except worker's compensation and employer's liability) to be kept in force by each Owner shall name as additional insureds the Owner Parties of the other Owners. Such Owner Parties shall be included as additional insureds under the commercial general liability insurance policies by endorsement using an ISO Form CG 20 26, July 2004 edition, or a substitute form providing equivalent coverage. The named insured's liability policy will be primary and noncontributory. The additional insured's other insurance will be excess coverage and not contribute to the primary coverage provided by the named insured's policy. An endorsement (ISO Form CG 20 37, 2001 edition, or a substitute form providing equivalent coverage) shall be attached to the policy to evidence that completed operations coverage for additional insureds are provided. The Responsible Owner may require the Owners to obtain such further endorsements as may be appropriate to ensure this result. Each policy and each additional insured endorsement shall provide that it is non-cancelable without at least thirty (30) days prior written notice to the additional insureds. Each policy shall be written as an "occurrence" policy and not as a "claims made" policy. With respect to insurance procured during construction, to the fullest extent that any Owner has an insurable interest (i.e., such construction involves use of a Parcel other than the Parcel of the constructing Owner), such policies shall include the affected Owners and their Owner Parties as additional insureds by endorsement indicating that coverage afforded to the additional insureds is primary and non-

# UNOFFICIAL COPY

contributory (the additional insured's other coverage will be excess coverage and not contribute to the primary coverage provided by the named insured's policy).

**7.4 Insurance Policies; Renewal.** All policies of liability insurance required by this Article VII shall be issued by insurers, licensed to do business in Illinois, shall have a Best's Rating of A- or better, and Best's Financial Size category of IX, or better, as published by A.M. Best in Best's Insurance Guide (or a similar rating in an equivalent publication if Best's Insurance Guide is no longer in publication). Not less than thirty (30) days prior to the expiration of each policy, each party required to procure insurance shall each deliver to the Owners, certified copies of the policies or certificates (in form and substance reasonably acceptable to the recipients) or other equivalent documentation evidencing the foregoing insurance or renewal thereof. Each such certificate shall provide that no expiration, cancellation or material change in the insurance evidenced thereby shall be effective unless thirty (30) days' notice of such expiration, cancellation or material change shall have been given to the certificate holder (and any Mortgagee, if applicable). Any insurance coverage enumerated above may be effected by a blanket policy or policies of insurance, provided that the total amount of insurance available with respect to each Owner's liability shall be at least the equivalent of separate policies in the amounts herein required and provided that in other respects any such policy or policies shall comply with the provisions of this Article VII, as reasonably determined by the Responsible Owner.

**7.5 Review of Insurance Requirements.** Limits of liability or types of insurance specified in this Article VII shall be reasonable and prudent considering the nature of the Office Park and operations involving the Office Park and shall be reviewed by the Responsible Owner from time to time to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable laws 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. Deductible amounts for insurance required hereunder shall be in such amounts as are customary or prevalent for a party charged with the management, maintenance, repair and operation of similar facilities. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Responsible Owner shall execute and record an instrument evidencing such increase, decrease or modification in the Recorder's Office as a supplement to this Declaration. The Responsible Owner shall employ an insurance consultant to perform such review periodically on its behalf and the cost of employing any such consultant shall be Common Maintenance Costs. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

## ARTICLE VIII. Waivers and Indemnity

# UNOFFICIAL COPY

8.1 **Waiver of Right of Recovery.** Each Owner hereby waives any and all rights of recovery against each other Owner for, and releases each other Owner from, all claims or liabilities for loss or damage to the Buildings, structures and improvements located on its respective Parcel or the contents contained therein, for loss of income on account of fire or other casualty, or for injury to property sustained to its Buildings, structures and improvements or its Common Areas, which loss or damage is of the type covered by the property and casualty insurance required to be maintained under Section 7.2 above. The party incurring the damage or loss will be responsible for any deductible or self-insured retention under its property insurance. Each Owner will notify the issuing insurance companies of the waiver and release set forth in this Section and will have its respective property insurance policies endorsed, if necessary, to prevent invalidation of coverage. The waiver and release in this Section will apply even if the damage or loss is caused in whole or in part by the ordinary negligence or strict liability of the released party but will not apply to the extent the damage or loss is caused by the gross negligence or willful misconduct of the released party.

8.2 **Indemnities.** For purposes of this Section, the phrase "Injury or Loss" shall mean the death of or accident, injury (personal and bodily), loss or damage, whatsoever, actually or claimed to have been suffered or sustained by any Person or to the property of any Person.

(a) Each Owner shall indemnify, defend and save harmless each other Owner and their respective officers, directors, managers, members, shareholders, employees, representatives, agents and Occupants (each, an "**Indemnified Party**") from and against all liability, loss, cause of action, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including reasonable attorneys' fees and litigation costs) to the extent the same is attributable to Injury or Loss occurring on the indemnifying Owner's Parcel; however, there shall be excluded from such indemnity (i) the result of any negligent or willful acts or omissions of the Indemnified Party or its employees or agents in connection with such Injury or Loss, or (ii) any Injury or Loss indemnified against by the Responsible Owner as provided in Section 8.2(c) below.

(b) Each Owner performing any Construction Work on its Parcel shall indemnify, defend and save harmless each Indemnified Party from and against all liability, loss, cause of action, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including reasonable attorneys' fees and litigation costs) to the extent the same is attributable to Injury or Loss actually or claimed to be caused in whole or in part by the negligence in the performance of such work by such Owner or its contractors; however, there shall be excluded from such indemnity the result of any negligent or willful acts or omissions of the Indemnified Party or its employees or agents in connection with such Injury or Loss.

(c) The Responsible Owner shall indemnify, defend and save harmless each Indemnified Party from and against any and all liability, loss, cause of action, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including without limitation, reasonable attorneys' fees and litigation costs) to the extent the same is attributable to Injury or Loss actually or claimed to be caused in whole or in part by the negligence of the Responsible Owner or its contractors in the performance or nonperformance of the Common

# UNOFFICIAL COPY

Maintenance; however, there shall be excluded from such indemnity the result of any negligent or willful acts or omissions of the Indemnified Party or its employees or agents in connection with such Injury or Loss.

(d) If any Claim is asserted against any Indemnified Party, the Indemnified Party shall promptly tender defense of the Claim to the Owners potentially responsible for such indemnity, (any Owner, who upon receipt of such notice agrees to undertake such indemnification, is herein referred to as the "Indemnifying Owner"). The Indemnifying Owner, at its sole expense, in good faith and upon the advice of counsel (satisfactory to the Indemnified Party), shall contest, defend, litigate and settle the Claim either before or after the commencement of litigation, at such time and upon such terms as it deems fair and reasonable, provided, that at least ten (10) days prior to any settlement, it gives written notice to the Indemnified Party of its intention to settle. The Indemnifying Owner shall pay all costs they incur in connection with the defense of the Claim and shall not be entitled to require that any action be brought against any other party before the Indemnified Party tenders defense of the Claim. Notwithstanding the foregoing provisions of this subsection, the Indemnified Party shall have the right, at its own expense, to participate in the defense of such Claim with counsel of its choosing, and in such event, the parties shall cooperate in the defense of such Claim. No insurance protection obtained by an Indemnified Party shall limit the responsibility of the Indemnifying Owners to indemnify, hold harmless and defend, as herein provided, but to the extent a particular Claim is satisfied by insurance, the Indemnifying Owners shall be released of liability.

## ARTICLE IX.

### Condemnation and Casualty

9.1 Restoration of Common Improvements. If a governmental taking or casualty loss involving the Common Improvements, the Responsible Owner shall be required to cause the repair, restoration or replacement of such Common Improvements to substantially the same condition existing prior to such taking or casualty, to the extent practical, and the cost of such repair shall be a Common Maintenance Expense, to the extent not reimbursed from insurance proceeds.

9.2 Restoration of Common Areas. If any Common Areas are damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Declaration, other than damage caused by ordinary use, wear and tear, then the Owner upon whose Parcel such Common Areas are located shall repair or restore such Common Areas, at its sole cost and expense and expenses with all due diligence (except that repair of Common Improvements even if located on the Parcel of the Responsible Owner, shall be repaired or restored as a Common Maintenance Expense as provided above). Except to the extent limited by Section 8.1, in the event damage or destruction of Common Areas is caused in whole or in part by another Owner or third person, then the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third person for indemnity, contribution or damages.

# UNOFFICIAL COPY

9.3 **Condemnation.** If any portion of the Office Park shall be condemned or conveyed in lieu of condemnation, then the award shall be paid to the Owner owning the Parcel or the improvements taken, and the other Owners hereby waive and release any right to recover any value attributable to the property interest so taken, except that (a) if the taking includes Common Improvements or other improvements benefitting more than one Owner, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned or benefited improvements to a useful condition, and (b) if the taking includes easement rights which are intended to extend beyond the term of this Declaration, then the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition, a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Owner owning the Parcel or the improvements taken, then the Owner of such other property interest shall have the right to seek an award for the taking thereof.

9.4 **Damage.** If any Building or other improvements are damaged or destroyed by any cause whatsoever, whether insured or not, then the Owner upon whose Parcel such Building or other improvements are located shall, subject to governmental regulations or insurance adjustment delays, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter (not to exceed two hundred forty (240) days after receipt of insurance proceeds and required governmental permits, both of which shall be promptly applied for and diligently pursued by such Owner) shall either (i) repair or restore the Building or other improvements so damaged to a complete unit, such construction to be performed in accordance with all provisions of this Declaration, or (ii) erect a new Building or other improvements in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion or balance of such Building or other improvements (if after demolition of the damaged portion, the undamaged portion does not constitute an architectural whole or if the Owner elects for other reasons to demolish the entire Building) and restore the cleared area to either hard surface condition or a landscaped condition, in which even the area shall be maintained pursuant to Section 4.2 above, until a replacement Building or other improvements are erected by such Owner (at its option). Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one of such alternatives. Such Owner shall give notice to the other Owners within two hundred ten (210) days from the date of such casualty of which alternative it elects, and the failure to do so shall be deemed to mean that such Owner has elected to proceed to repair and restore the Building. Notwithstanding the preceding provisions of this Section, damage to the common Areas on an Owner's Parcel is governed by the provisions of Section 9.2 above.

## ARTICLE X. Remedies

10.1 **Event of Default.** Any Person which is subject to the provision of this Declaration (including Owners and Occupants) shall be deemed to be in default hereunder ("**Defaulting Party**") upon the occurrence of one or more of the following events: (a) the failure of such Person to make any payment required to be made hereunder within thirty (30) days after receipt of notice from any other Owner (with a copy to all Owners) specifying a

# UNOFFICIAL COPY

failure to pay an amount due hereunder, (b) the failure of such Person to perform any non-monetary covenants, within thirty (30) days from receipt of notice from any other Owner (with a copy to all other Owners) specifying the particulars of such failure to observe or perform (however, such Person shall not be deemed in default if such failure to observe or perform as described in such notice cannot be reasonably rectified within such thirty-day period despite such Person's good faith efforts to do so provided such Person shall have commenced to cure with such thirty-day period and thereafter diligently prosecutes such cure to completion). Each Owner shall be deemed a Defaulting Party if any of its Occupants becomes a Defaulting Party.

10.2 Right to Cure Defaults. In the event any Person shall become a Defaulting Party, then the Responsible Owner first (and only then any other Owner following the procedures in Section 10.5 below) (the "Curing Owner") shall have the right, but not the obligation, upon thirty (30) days' prior notice to the Defaulting Party (with a copy to all Owners), to cure such default if the Defaulting Party fails to cure the same within such ten-day period. Notwithstanding the foregoing, in the event of an emergency which threatens the health or safety or property of any Person, no advance written notice shall be required prior to curing such breach or default on behalf of the Defaulting Party, but the Curing Owner shall make reasonable efforts to contact the Defaulting Party prior to or during the course of such cure. The Curing Owner shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party (and such entry shall not be deemed to be an act of trespass). Any costs incurred by the Curing Owner pursuant to this Section 10.2, together with interest as hereafter provided, shall become a lien against the Parcel of the Defaulting Party upon recordation of a claim of lien in the Recorder's Office by the Curing Owner who is making the claim, and the Curing Owner shall be entitled to take any action necessary to perfect or foreclose such lien. Such lien shall be subordinate to the lien of any previously recorded Mortgage but shall be superior to the lien of any Mortgage recorded after the recording of such lien. Interest shall accrue on such costs from the date incurred by the Curing Owner to the date paid at the rate of eight percent (8%) per annum, but in no event higher than the maximum rate permissible by Law (the "Default Rate"). Any costs incurred by the Curing Owner pursuant to this Section 10.2, before their recovery from the Defaulting Party shall be paid by the other Owners according to their Pro Rata Shares as additional Common Maintenance Costs.

10.3 Other Remedies. In addition to the foregoing, a Curing Owner may institute an action against the Defaulting Party for specific performance, declaratory or injunctive relief, damages or other suitable legal or equitable remedy. The rights and remedies provided in this Article X and the enforcement thereof as herein provided shall be in addition to and not in substitution for or exclusion of any other rights and remedies which a Curing Owner may have under this Declaration or at law, in equity or otherwise.

10.4 Attorneys' Fees. In addition to the recovery of damages and costs expended on behalf of the Defaulting Party, together with interest thereon, as herein provided, the prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the Defaulting Party the prevailing party's reasonable costs and expenses

# UNOFFICIAL COPY

incurred in connection with such action, including reasonable attorneys' fees and court costs (including any appeal).

10.5 **Independent Enforcement Action.** If the Responsible Owner fails to diligently and in good faith enforce this Declaration in any circumstance when the Owners of those Parcels representing more than 50% of the gross area of the Property have requested an enforcement action, then the Owners requesting such action may jointly appoint one of their members to assume the rights and duties of the Curing Owner, as set forth in Section 10.2. Before undertaking such step, the Owners complaining of the failure of the Responsible Owner shall give notice to the Responsible Owner (with a copy to all other Owners) specifying the particulars of such failure to enforce this Declaration (however, the Responsible Owner shall not be deemed to have failed in its enforcement efforts if such enforcement effort as requested in such notice cannot be reasonably be achieved within the time period sought by the requesting Owners despite the Responsible Owner's good faith efforts to do so, provided the Responsible Owner shall have undertaken reasonable steps (including retaining counsel and commencing and diligently prosecuting any suit) which are necessary steps to achieving compliance with the terms of this Declaration. The right to self-help, in the event of the failure of the Responsible Owner to diligently prosecute events of default hereunder, shall be exercised in limited manner only for the purpose of curing the immediate circumstances giving rise to the event of default when the Responsible Owner fails to respond timely.

10.6 **Waiver of Default.** No waiver of any default by any party to this Declaration shall be implied from any omission by the any Owner to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The rights and remedies given under this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Owner shall not impair their standing to exercise any other right or remedy.

10.7 **Waiver of Consequential or Punitive Damages.** The Owners expressly waive the right to recover from each other any judgment for consequential or punitive damages.

10.8 **Substitution for Responsible Owner.** The occurrence of any of the following events shall be known as "Substitution Events":

(a) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Responsible Owner in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee,



# UNOFFICIAL COPY

custodian, trustee, (or similar official) of the Responsible Owner for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

(b) The commencement by the Responsible Owner of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Responsible Owner to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar official) of the Responsible Owner or the Parcels owned by the Responsible Owner, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Responsible Owner generally to pay such entity's debts as such debts become due or the taking of action by the Responsible Owner in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.

(c) The Responsible Owner persistently and materially fails to comply with applicable Laws or the provisions of this Declaration, including the Maintenance of the Common Improvements contemplated by this Declaration (and such failure does not arise from the failure of Owners to pay their Pro Rata Share of Common Maintenance Costs).

Upon the occurrence of a Substitution Event, the Owners of those Parcels representing more than 50% of the gross land area of the Property shall have the right to designate another Owner to assume the duties of the Responsible Owner under this Declaration until such time as the existence, structure or financial condition of the Owner originally intended to be the Responsible Owner hereunder is again suitable for performing its duties. Each change in the Responsible Owner shall be effective only if the Owners of those Parcels representing more than 50% of the gross area of the Property execute and record a written supplement to this Declaration in the Recorder's Office.

## ARTICLE XI. Rights of the Village

In the event that any Maintenance required under the terms or provisions of this Declaration is not performed and such failure constitutes a violation of Laws (including the Property Maintenance Code adopted from time to time by the Village) or the terms and conditions of any approvals granted by the Village for the construction, use and operation of the Office Park, and if such failure persists for more than thirty (30) days (or such lesser notice period that is reasonable in the event of emergency) after the Village gives written notice to the Owners specifying the particulars of such failure to observe or perform (however, the Owners shall not be deemed in default if such failure to observe or perform as described in such notice cannot be reasonably rectified within such thirty-day period despite the Owners' good faith efforts to do so, provided the Owners shall have commenced to cure with such thirty-day period and thereafter diligently prosecute such cure to completion), then the Village is expressly authorized (but is not required) to provide such necessary Maintenance. If the Village performs such Maintenance, then the Owners shall be obligated to repay the Village for all reasonable expenses incurred for said maintenance or repair (or

# UNOFFICIAL COPY

collection or enforcement), including reasonable attorney's fees, if any (each Owner thereby becoming liable for its Pro Rata Share of such Village expenses). The Village shall also have the right, in furtherance of its enforcement of its claim for reimbursement, to record a lien against all of the Parcels, which said lien shall be effective as of the date of recordation in the Recorder's Office. Notwithstanding any other provisions of this Declaration, the provisions of this Article XI may not be altered, amended, or deleted without the written consent of the Village.

## ARTICLE XII.

### Approvals

12.1 Reasonable Approval. Unless otherwise expressly provided in this Declaration, whenever a consent or approval ("approval") is required, such approval shall not be unreasonably withheld, conditioned or delayed.

12.2 Time to Approve. Upon receipt of by Owner of a request for approval, such Owner shall, within thirty (30) days (except where a different approval period is expressly provided for under this Declaration) after receipt of such request for approval, notify in writing the Owner making such request of any objections thereto (such objections to be specifically stated) and such Owner may within fifteen (15) days thereafter resubmit their request for approval and rectifying any such objections to the appropriate Owner. The responding Owner shall then have an additional fifteen (15) days after receipt of such revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by such Owner, provided that the request for approval specifies that failure to object within such time period shall constitute approval.

12.3 No Liability. No approval given under this Declaration shall create any responsibility or liability on the part of the approving Owner to any matter approved (including any approval by the Responsible Owner of any matter submitted to the Responsible Owner for approval) or relieve the Owner requesting approval from its obligation to comply with applicable provisions of this Declaration.

## ARTICLE XIII.

### Term; Covenants Running With Land

13.1 Term. Except as otherwise provided herein, this Declaration shall continue in full force and effect for an initial term of forty (40) years from the date it is recorded in the Recorder's Office and for consecutive 10-year renewal terms, each such renewal term commencing upon expiration of the preceding term, unless within 180 days prior to the expiration date of the term then in effect, the Owners of Parcels representing more than 50% of the gross land area of the Property execute and record a written instrument terminating this Declaration in the Recorder's Office. Notwithstanding the foregoing, if this Declaration is terminated, the easements granted in Article II shall survive such termination for such period of time as may be required to assure the continuance an independent means of ingress and egress to and from any Parcel to and from a dedicated right-of-way and the compliance with

# UNOFFICIAL COPY

all applicable Laws regarding drainage retention and control of storm water for all existing improvements.

13.2 **Runs with Land.** Except as otherwise specifically provided herein, the easements, rights, privileges, covenants, conditions, burdens, obligations and restrictions contained herein shall run with the land and: (i) are made for the direct, mutual and reciprocal benefit of all of the Parcels; (ii) create mutual equitable servitudes upon each Parcel in favor of the Parcel benefited; (iii) bind every entity or person having any fee, leasehold, or other interest in any portion of the Parcels at any time or from time to time to the extent that such portion of said Parcel is affected or bound by the covenant, restriction or provision in question or that the covenant, restriction or provision is to be performed on such portion; and (iv) shall inure to the benefit of and be binding upon each Owner and their respective successors and assigns, and all persons or entities claiming under them. No Owner shall, unless otherwise provided in this Declaration, have any obligation or liability under this Declaration for any claim or matter accruing or resulting from conditions created subsequent to transfer by such Owner of fee title to its Parcel.

13.3 **Declaration Not Canceled by Breach.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise to terminate this Declaration, but such Owner shall retain any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

## ARTICLE XIV.

### **Mortgages Subordinate to Declaration**

Any Mortgage affecting any portion of the Office Park shall at all times be subject and subordinate to the terms of this Declaration and any Person foreclosing any such Mortgage or acquiring title by reason of a deed in lieu of foreclosure shall acquire title to the Parcel affected thereby subject to all of the terms of this Declaration.

## ARTICLE XV.

### **Amendment**

Except as provided below, any amendment of this Declaration, in whole or in part, shall require the consent of Owners of those Parcels representing more than 50% of the gross land area of the Property, by an instrument in writing, executed and acknowledged by such Owners, duly recorded in the Recorder's Office; provided, however, no such amendment shall (i) impose any materially greater obligation on, or materially impair any right of, an Owner or its Ground Tenant without the consent of such Owner and its Ground Tenant, if any, (ii) terminate this Declaration, except with the written consent of all Owners and Ground Tenants or (iii) modify the rights of the Village under Article XI, except with the written consent of the Village as indicated by certified resolution adopted by the board of trustees of the Village and recorded in the Recorder's Office.

## ARTICLE XVI.

### **General Provisions**

# UNOFFICIAL COPY

16.1 **Principles of Construction.** Unless otherwise specified, (i) all references to exhibits and sections are to those in this Declaration, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Declaration as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined, (iv) the word “including” means “including but not limited to,” and (v) the word “and” indicates that all connected items, conditions, provisions, or events apply; and the word “or” indicates that one or more of the connected items, conditions, provisions, or events may apply.

16.2 **Time of the Essence.** Time is of the essence of each provision of this Declaration.

16.3 **No Third Party Beneficiary.** Except as otherwise specified herein, the provisions of this Declaration are for the exclusive benefit of Declarant and the Owners, their successors and assigns, and not for the benefit of any third person or entity, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or entity. No Person other than Owners (and the Village) shall have any right to enforce any provisions hereof.

16.4 **Notice.** Any notice, request, demand, approval or consent given or required to be given under this Declaration shall be in writing and sent by certified mail or by national overnight courier service which provides written confirmation of delivery, and shall be deemed to have been given three (3) days after the date upon which the notice is deposited for mailing in a United States Post Office or mail receptacle with proper postage affixed in the case of certified mail, and two (2) days after the date upon which the notice is deposited with a national overnight courier service with all fees and charges prepaid, and mailed to the party to be notified at the addresses provided by each Owner and Ground Tenant to the Responsible Owner, or at the last changed address given by such party to the Responsible Owner as herein provided. The Responsible Owner shall maintain a register of such addresses (including an address for Declarant) and furnish a copy to each Owner and Ground Tenant upon request. Any Owner may, at any time, change its notice address and/or add additional owners for purposes of delivery of notices by mailing, as provided above, at least ten (10) days before the effective date of such change, a notice stating the change and setting forth the new address. If any such notice requires any action or response by the recipient or involves any consent or approval solicited from the recipient, such fact shall be clearly stated in such notice.

16.5 **Captions.** The captions of the sections and sub-sections of this Declaration are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

16.6 **Governing Laws.** This Declaration shall be construed in accordance with the laws of the State of Illinois and any applicable federal laws and regulations.

16.7 **No Partnership.** Neither anything in this Declaration contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by

# UNOFFICIAL COPY

any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Declaration.

16.8 **Public Dedication.** Except as otherwise specified herein, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever.

16.9 **Severability.** If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.10 **Exhibits.** All exhibits referred to herein and attached hereto shall be deemed part of this Declaration.

16.11 **Counterparts.** This Declaration may be executed in counterparts, each of which shall be deemed an original.

16.12 **Limited Liability of Parties.** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations, limited liability companies or entities who constitute an Owner, including, but not limited to, officers, directors, members, managers, employees or agents of an Owner, with respect to any of the terms, covenants, conditions, and provisions of this Declaration. In the event of any action at law to recover damages hereunder, the Owner who seeks recovery shall look solely to the interest of the defaulting Owner, its successors and assigns, in such defaulting Owner's Parcel(s) for the satisfaction of each and every remedy of the Owner seeking to recover damages.

16.13 **Mitigation of Damages.** In all situations arising out of this Declaration, each Owner shall attempt to avoid and mitigate the damages resulting from the conduct of any other party bound by this Declaration. Each Owner shall take all reasonable measures to effectuate the provisions of this Declaration.

16.14 **Estoppel Certificates.** The Responsible Owner, within thirty (30) days of its receipt of a written request from an Owner, shall from time to time provide the requesting Owner a certificate stating to the best of the Responsible Owner's knowledge, whether any Owner to this Declaration is in default or violation of this Declaration and if so identifying such default or violation.

16.15 **Excusable Delay.** Whenever performance is required of any Owner hereunder, such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or

# UNOFFICIAL COPY

other casualty, or any cause beyond the reasonable control of such party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any party from the prompt payment of any monies required by this Declaration.


16.16 WAIVER OF TRIAL BY JURY; FORUM. EACH OWNER BY AGREEING TO BE BOUND BY THE TERMS OF THIS DECLARATION WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY DECLARANT, THE RESPONSIBLE OWNER OR ANOTHER OWNER IN CONNECTION WITH THIS DECLARATION. EACH OWNER SUBMITS TO THE JURISDICTION OF ANY ILLINOIS STATE COURT OR ANY FEDERAL COURT SITTING IN ILLINOIS OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DECLARATION, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.

Property of Cook County Clerk's Office

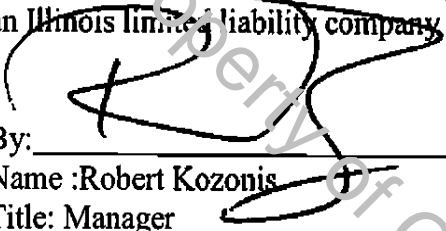
# UNOFFICIAL COPY

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

~~POPLAR CREEK OFFICE PLAZA L.L.C.,~~  
an Illinois limited liability company

By:   
Name :Robert Kozonis  
Title: Manager

~~POPLAR CREEK PROPERTIES, L.L.C.,~~  
an Illinois limited liability company

By:   
Name :Robert Kozonis  
Title: Manager

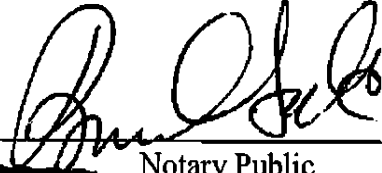
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS       )  
  )  
  )       SS  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Kozonis personally known to me as Manager of **POPLAR CREEK OFFICE PLAZA L.L.C.**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as such Manager of said limited liability company, pursuant to authority given by the members of said limited liability company, as his/her own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30<sup>th</sup> day of May, 2020.



Notary Public

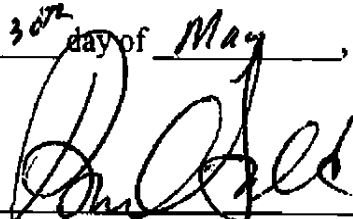


My Commission Expires

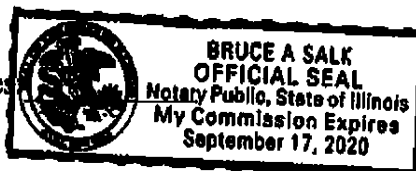
STATE OF ILLINOIS       )  
  )  
  )       SS  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Kozonis personally known to me as Manager of **POPLAR CREEK PROPERTIES, L.L.C.**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as such Manager of said limited liability company, pursuant to authority given by the members of said limited liability company, as his/her own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30<sup>th</sup> day of May, 2020.



Notary Public



My Commission Expires



# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION OF THE PCOP PROPERTY

LOT 1 IN POPLAR CREEK OFFICE PLAZA, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B LEGAL DESCRIPTION OF THE PCP PROPERTY

LOTS 2, 3 AND 4 IN POPLAR CREEK OFFICE PLAZA, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT C LEGAL DESCRIPTION OF THE DETENTION PARCEL

LOT 5 IN POPLAR CREEK OFFICE PLAZA, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

