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ORIGINAL

Declaration of Covenants, Conditions,  
Restrictions and Easements

Dated as of April 20, 1989

By

89208434

LaSalle National Bank  
As Trustee Under Trust Agreement  
Dated March 1, 1984  
And Known As Trust No. 107701

and

LaSalle National Bank  
As Trustee Under Trust Agreement  
Dated September 1, 1988  
And Known as Trust No. 11495

This instrument was prepared by  
and after recording should be  
returned to:

Ira J. Swidler  
Katten Muchin & Zavis  
525 West Monroe Street  
Suite 1600  
Chicago, IL 60606

Box 15

Box 15  
Title # 243197 DICW

Property of Cook County Clerk's Office

89208434

Recorder - See last 2 pages for property address and tax number listing.

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08/11/14

Department of Government Services  
Restrictions and Exemptions

Dated as of April 10, 2014

Property of Cook County Clerk's Office

Label National Bank  
As Trustee Under Trust Agreement  
Dated March 1, 1998  
And Known as Trust No. 1000

Label National Bank  
As Trustee Under Trust Agreement  
Dated September 1, 1998  
And Known as Trust No. 1000

08/11/14

11/20/14  
HARRIS # 52112  
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Mortgagee's Consent  
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## DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into as of the 20th day of April, 1989, by LaSalle National Bank, a national banking association, not personally but solely as Trustee under a Trust Agreement dated March 1, 1984, and known as Trust No. 107701 ("Trust 107701") and LaSalle National Bank, a national banking association, not personally, but solely as Trustee under a Trust Agreement dated September 1, 1988, and known as Trust No. 113495 ("Trust 113495") (Trust 107701 and Trust 113495 sometimes collectively called the "Declarant").

### R E C I T A L S:

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

B. Trust 113495 is the record legal title holder of the Total Parcel situated in Chicago, Cook County, Illinois and legally described in Exhibit 1.46 and leases the Total Parcel to Trust 107701 for a term of approximately seventy-five (75) years pursuant to a Lease Agreement dated October 7, 1988 (the "Ground Lease"), a Memorandum of which was recorded in the office of the Recorder of Deeds of Cook County, Illinois (the "Recorder") as Document No. 88464426. The Ground Lease provides that upon the expiration or sooner termination of the Ground Lease, title to the Commercial Building will automatically be in the Owner of the Commercial Parcel.

C. Trust 107701 is the record legal title holder of the Building.

D. Immediately after this Declaration is recorded in the office of the Recorder, the Declarant will convey (i) the Residential Property to LaSalle National Bank, a national banking association, not personally but solely as Trustee under a Trust Agreement dated January 2, 1987, and known as Trust No. 111200 (the "Residential Property Trustee"), and (ii) the Hotel Property to LaSalle National Bank, a national banking association, not personally but solely as Trustee under a Trust Agreement dated January 2, 1987 and known as Trust No. 111150 (the "Hotel Property Trustee"). The foregoing conveyances (the "Conveyances") shall grant and reserve the Easements provided for herein and otherwise

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## DECLARATION OF GOVERNMENT RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into by and between the LASSALLE NATIONAL BANK, a national banking association, not personally but solely as Trustee under the Trust Agreement dated January 2, 1937, and known as the "LASSALLE NATIONAL BANK TRUST" (Trust 107701) and LASSALLE NATIONAL BANK, a national banking association, not personally but solely as Trustee under the Trust Agreement dated September 1, 1933, and known as the "LASSALLE NATIONAL BANK TRUST" (Trust 111322) (Trusts 107701 and 111322) collectively called the "Trusts").

Property of Cook County Clerk's Office

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

B. Trust 107701 is a trust created by the will of the late Total Estate situated in Cook County, Illinois, and is legally described in Exhibit A hereto. Trust 107701 for a term of years was granted pursuant to a lease agreement between the Trust and the Recorder of Cook County, Illinois, under Document No. 88447. The term of the lease shall expire on or after termination of the Commercial Building will subsist in the Commercial Building.

C. Trust 111322 is the trust legal description of the Building

Immediately after this Declaration is filed in the office of the Recorder, the Building shall be transferred to the Residential Property to LASSALLE NATIONAL BANK, a national banking association, not personally but solely as Trustee under the Trust Agreement dated January 2, 1937, and known as the "LASSALLE NATIONAL BANK TRUST" (Trust 107701) and LASSALLE NATIONAL BANK, a national banking association, not personally but solely as Trustee under the Trust Agreement dated January 2, 1937, and known as the "LASSALLE NATIONAL BANK TRUST" (Trust 111322). The Recitals provided for the grant and reserve the easements provided for herein.

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be subject to this Declaration. It is further intended that the Residential Property Trustee shall subject the Residential Property to the provisions of the Act by recording the Condominium Declaration with the Recorder.

E. Each of the Commercial Building, the Hotel Building and the Residential Building may be structurally and/or functionally dependent on one or both of the others and may depend upon one or both of the others, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Commercial Building, the Hotel Building and the Residential Building.

F. Declarant desires by this Declaration to provide for the efficient operation of the Commercial Property, the Hotel Property and the Residential Property, to assure the harmonious relationship of the owners of each such Property, and to protect the respective values of each such Property, by providing for, declaring and creating certain easements, covenants and restrictions benefitting and burdening the Commercial Property, the Hotel Property and the Residential Property.

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

## ARTICLE I

### Definitions

1.1 "Act" means the Condominium Property Act of the State of Illinois in effect on the date the Condominium Declaration is recorded, as amended from time to time.

1.2 "Architect" has the meaning set forth in Article XVI hereof.



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1.3 "Association" means the 132 East Delaware Place Condominium Association, an Illinois not-for-profit corporation formed or to be formed for the purpose of administering the Condominium Property pursuant to the Act.

1.4 "Building" means all improvements, including, but not limited to, the footings, foundations, columns, piles, buildings, improvements, fixtures, equipment, machinery, Facilities, sidewalks, walkways, driveways and landscaping now or hereafter located in, on, under, within or upon the Total Parcel, including all alterations, rebuildings, replacements and additions thereto.

1.5 "Commercial Building" means the portion of the Building located within the Commercial Parcel.

1.6 "Commercial Easement Facilities" means Facilities located in the Residential Property or the Hotel Property (A) primarily benefitting the Commercial Property or the Owner of the Commercial Property, including, without limitation, those Facilities identified in Exhibit 1.6 as "Commercial Easement Facilities", or (B) necessary for the Owner of the Commercial Property to perform its obligations under Section 6.1 of this Declaration but in either case excluding Facilities, the Maintenance for which the Owner of the Residential Property is expressly responsible under Section 6.2 hereof or for which the Owner of the Hotel Property is expressly responsible under Section 6.3 hereof.

1.7 "Commercial Parcel" means that part of the Total Parcel legally described in Exhibit 1.7 attached hereto.

1.8 "Commercial Property" means the Commercial Parcel improved with the Commercial Building.

1.9 "Common Elements" means all portions of the Condominium Property except the Units.

1.10 "Condominium Declaration" means the Declaration of Condominium Ownership, Easements, Restrictions, Covenants and By-laws for 132 East Delaware Condominium Association, as the same may be amended from time to time.

1.11 "Condominium Property" means the Residential Property from and after its submission to the Act and so long as it has not been withdrawn from the Act.

1.12 "Creditor Owner", except where otherwise defined hereunder in a specific context, means an Owner to whom a payment of money or other duty or obligation is owed under this

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Declaration by any other Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder.

1.13 "Declarant" has the meaning set forth in the preamble hereof.

1.14 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements dated as of April 20, 1989, including all exhibits, appendices, amendments and supplements thereto.

1.15 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner who has failed to make a payment of money owed under this Declaration to any other Owner or has failed to perform any of its duties or obligations as and when required under this Declaration.

1.16 "Depositary" has the meaning set forth in Article XVII hereof.

1.17 "Easements" means all easements provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.

1.18 "Emergency Situation" means (a) a situation impairing or imminently likely to impair structural support or Facilities of the Building; or (b) a situation causing or imminently likely to cause bodily injury to persons or substantial physical damage to all or any portion of the Building or any property within or about the Building; or (c) a situation causing or immediately likely to cause substantial economic loss to either the Owner of the Commercial Building or the Owner of the Hotel Property; or (d) a situation which materially interferes with the beneficial use of any Owner of its respective portion of the Building. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

1.19 "Facilities" means all components, and any replacements or substitutions therefor, of the chilled and condensed water, central air handling and fan, temperature control, domestic water, fire suppression, sanitary waste, storm water, electrical, gas, detector and alarm, master satellite antenna, emergency power, telephone, elevator, escalator, lightning protection, kitchen waste and any other systems forming a part of the Building and designated or utilized to furnish utility or any other services to any portion of the Building, including without limitation: annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, elevator cars, equipment, fans,



fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, tanks, transformers, valves, wiring and the like.

1.20 "First Commercial Mortgage" means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, on the Commercial Building (including, without limitation, any first mortgage or first trust deed which encumbers the Commercial Building and other property), together with any other mortgages or trust deeds (and all amendments, supplements and extensions thereto) on the Commercial Building held by the holder of the first mortgage or first trust deed on the Commercial Building.

1.21 "First Hotel Mortgage" means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, on the Hotel Property, together with any other mortgages or trust deeds (and all amendments, supplements and extensions thereto) on the Hotel Property held by the holder of the first mortgage or first trust deed on the Hotel Property.

1.22 "First Residential Mortgage" means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, on the Residential Property or any part thereof made by the Declarant or the Residential Property Trustee. First Residential Mortgage does not include a first mortgage or first trust deed in the nature of a mortgage on a Unit made by a Unit Owner other than the Residential Property Trustee.

1.23 "First Mortgage" means the First Commercial Mortgage, the First Hotel Mortgage or the First Residential Mortgage, as the context requires. "First Mortgages" means the First Commercial Mortgage, the First Hotel Mortgage and the First Residential Mortgage.

1.24 "Garage" means the portion of the Garage Building designated or used for parking automobiles.

1.24A "Garage Building" means the portion of the Commercial Building bounded by North Rush Street, East Walton Street, East Delaware Place and North Ernst Court.

1.25 "Hotel Building" means the portion of the Building located within the Hotel Parcel.

1.26 "Hotel Easement Facilities" means Facilities located in the Commercial Property or Residential Property (A) primarily benefitting the Hotel Property or the Owner of the Hotel Property,



including, without limitation those Facilities identified in Exhibit 1.26 as "Hotel Easement Facilities", or (B) necessary for the Owner of the Hotel Property to perform its obligations under Section 6.3 of this Declaration, but in either case excluding Facilities, the Maintenance for which the Owner of the Residential Property is expressly responsible under Section 6.2 hereof or for which the Owner of the Commercial Property is expressly responsible under Section 6.1 hereof.

1.27 Intentionally Omitted.

1.28 "Hotel Parcel" means that part of the Total Parcel legally described in Exhibit 1.28 attached hereto.

1.29 "Hotel Property" means the Hotel Parcel improved with the Hotel Building.

1.30 "Hotel Property Trustee" has the meaning set forth in Recital D.

1.31 "Maintenance" means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities (except repair and restoration required by Section 10.2 and 10.3 hereof) and includes the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

1.32 "Owner of the Commercial Building" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, the present fee ownership of the Commercial Building. Owner of the Commercial Building does not include the owner of any remainder interest in the Commercial Building until such time as such interest becomes a present interest.

1.33 "Owner of the Commercial Parcel" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, fee simple ownership of the Commercial Parcel.

1.34 "Owner of the Commercial Property" means the Owner of the Commercial Building and the Owner of the Commercial Parcel.

1.35 "Owner of the Hotel Property" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, fee simple ownership of the Hotel Property.



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including without limitation those described in Exhibit 1.22 as "Hotel Property" and the Owner of the Hotel Property, shall be deemed to have accepted the terms of this Declaration, the Maintenance Agreement and the Rules and Regulations of the Hotel Property, which the Owner of the Hotel Property shall be deemed to have accepted under Section 6.1 hereof.

1.27 Intentionally Omitted.

1.28 "Hotel Parcel" means that part of the Hotel Property legally described in Exhibit 1.22 attached hereto.

1.29 "Hotel Property" means the Hotel Building and the Hotel Building.

1.30 "Hotel Property Interest" has the meaning set forth in Section 6.1.

1.31 "Maintenance" means the painting, repair, reconditioning, refinishing, redecking, cleaning, painting, staining, or finishing of a building or building component or building part, or the right of access to and use of any portion of such building or building part, subject, however, to any limitations and conditions set forth in this Declaration.

1.32 "Owner of the Commercial Building" means any person or entity or jointly, individually or collectively, who has a present or prospective interest in the Commercial Building, whether such interest becomes a present interest.

1.33 "Owner of the Commercial Building" means any person or entity or jointly, individually or collectively, who has a present or prospective interest in the Commercial Building, whether such interest becomes a present interest.

1.34 "Owner of the Commercial Building and the Owner of the Hotel Property" means the Owner of the Commercial Building and the Owner of the Hotel Property.

1.35 "Owner of the Hotel Property" means any person or entity or jointly, individually or collectively, who has a present or prospective interest in the Hotel Property, whether such interest becomes a present interest.

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1.36 "Owner of the Residential Property" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, fee simple ownership of the Residential Property. If and so long as the Residential Property has been submitted to and remains subject to the provisions of the Act, the Owner of the Residential Property shall mean all of the Unit Owners collectively and not individually.

1.37 "Owner" means the Owner of the Commercial Building, the Owner of the Hotel Property or the Owner of the Residential Property, as the context requires. "Owners" means the Owner of the Commercial Building, the Owner of the Hotel Property and the Owner of the Residential Property. Wherever the word "owner" appears herein and such word is not capitalized it shall mean any owner of any portion of the Total Property.

1.38 "Plans" means those architectural and engineering drawings and specifications used for the original construction of the Building which are identified in Exhibit 1.38 attached hereto. The Plans are not "as-built" plans and may be changed or supplemented as construction continues after the date this Declaration is recorded. Therefore, the Plans do not necessarily reflect the exact dimensions or location of each component in or about the Building.

1.39 "Recorder" has the meaning set forth in Recital B hereof.

1.40 "Residential Building" means the portion of Building located within the Residential Parcel.

1.41 "Residential Easement Facilities" means Facilities located in the Commercial Property or the Hotel Property (A) primarily benefitting the Residential Property or the Owner of the Residential Property, including, without limitation, those Facilities identified in Exhibit 1.41 as "Residential Easement Facilities", or (B) necessary for the Owner of the Residential Property to perform its obligations under Section 6.2 of this Declaration, but in either case excluding Facilities, the Maintenance for which the Owner of the Commercial Property is expressly responsible under Section 6.1 hereof or for which the Owner of the Hotel Property is expressly responsible under Section 6.3 hereof.

1.42 Intentionally Omitted

1.43 "Residential Parcel" means that part of the Total Parcel legally described in Exhibit 1.43 attached hereto.



1.44 "Residential Property" means the Residential Parcel improved with the Residential Building.

1.45 "Residential Property Trustee" has the meaning set forth in Recital D.

1.46 "Total Parcel" means the parcel of real estate described in Exhibit 1.46 attached hereto (excluding the Building).

1.47 "Total Property" means the Total Parcel improved with the Building.

1.48 "Unit" means a part of the Condominium Property described as a "Unit" in the Condominium Declaration.

1.49 "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.

1.50 "Unit Ownership" means a part of the Condominium Property consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

1.51 "Valet Parking Area" means the portion of lower level 3 of the Building to be utilized for valet parking (identified as #LL301, #LL309 and #LL351 in the Plans).

1.52 Certain terms used in Exhibits 6.1(A) through 6.1(N) and 6.2(A) and 6.2(B) attached hereto are defined in Exhibit 1.52 attached hereto.

## ARTICLE II

### Easements Benefitting the Residential Property

2.1 The following perpetual easements burdening the Commercial Property and benefitting the Residential Property are hereby declared and created:

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

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- 1.44 "Residential Property" means the Residential Building improved with the Residential Building.
- 1.45 "Residential Property" means the building or buildings in Section D.
- 1.46 "Total Parcel" means the parcel or parcels shown in Exhibit 1.46 attached hereto including the building.
- 1.47 "Total Property" means the total parcel or parcels in the Building.
- 1.48 "Unit" means a part of the Building described as a "Unit" in the Declaration and attached hereto.
- 1.49 "Unit Owner" means the person or persons, individually or together, having the ownership of a Unit Ownership.
- 1.50 "Unit Ownership" means a portion of the property consisting of one Unit and any Common Elements situated thereon.
- 1.51 "Valid Parking Area" means the portion of the Building to be utilized for parking of motor vehicles as shown on Plans 11000 and 11001 in the Declaration.
- 1.52 Certain terms used in Exhibits 1.52 attached hereto and defined in Section 1.52(A) and 1.52(B) attached hereto.

## ARTICLE II

Establishing Beneficial Use of the Residential Building

2.1 The following beneficial use of the Commercial Property and benefiting the Residential Building hereby declared and created:

(A) A non-exclusive agreement is made between members, tenants, lessees, licensees, and any other person or entity having an interest in any part of the Commercial Property and the Residential Building and all persons having an interest in the Commercial Property with respect to the use of the Commercial Property as provided in the Declaration.

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(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Commercial Property and connected to Facilities at any time located in the Residential Property (and any replacements thereof) which provide or shall be necessary to provide the Residential Property with any utilities or other services or which may otherwise be necessary to the operation of the Residential Property, and (ii) permitting the exercise of the rights granted to the Owner of the Residential Property pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Residential Building encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Residential Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Commercial Property by the Owner of the Commercial Property.

(D) An exclusive easement for the Maintenance of Residential Easement Facilities, subject to the rights of the Owner of the Commercial Building granted pursuant to Section 6.6(A) hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the truck ramps (identified as #160 and #LL283 in the Plans), the trucking concourse and loading dock (identified as #LL282 and #LL279 in the Plans) and the service corridors (identified as #LL271, #LL268, #LL265, #LL205, #LL215, #LL227 and #LL211 in the Plans) located in the Commercial Property, to and from the receiving room (identified as #LL289 in the Plans), the storage room (identified as #LL213 in the Plans) and the shafts housing elevators designated as Nos. 38, 39, 40 and 41 located in the Residential Property.

(F) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Commercial Property.







(G) A non-exclusive easement for the use of the trucking concourse and loading dock (identified as #LL282 and #LL279 in the Plans) located on lower level 2 of the Commercial Building for the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in a residential or apartment building, subject, however, to the terms and conditions set forth in Exhibit 6.1(E) attached hereto.

(H) A non-exclusive easement over, on, across and through the Commercial Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 2.1, (ii) during an Emergency Situation, or (iii) to construct and maintain substitute or additional structural support required by Article 7 hereof.

(I) A non-exclusive easement for the use of the facade cleaning and repair platform and related equipment (the "Operator's Platform") located on the 67th level roof of the Building for the purpose of cleaning the exterior windows and facade of the Residential Building, or any portion thereof, and maintaining, repairing and replacing the exterior of the Residential Building (including facade, walls, windows, screens and the like), subject, however, to the terms and conditions set forth in Exhibit 6.1(J) attached hereto.

(J) A non-exclusive easement for pedestrian ingress and egress over, on, across and through the Garage, the mall corridor (identified as #657 in the Plans) and vestibule (identified as #632 in the Plans) located in the Commercial Property to and from the elevator lobby (identified as #608 in the Plans) located in the Residential Property.

(K) A non-exclusive easement for pedestrian ingress and egress over, on, across and through the vestibule (identified as #123 in the Plans) located in the ground level valet parking lobby in the Commercial Property to and from the vestibule (identified as #124 in the Plans) located in the ground level lobby in the Residential Property.

(L) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the corridor (identified as #2914 in the Plans) and the stairs (identified as #19 in the Plans) located on level 29 in the Commercial Property to and from the mechanical rooms (identified as #2916 and #2919 in the Plans) located on level 29 in the Residential Property.

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(A) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #125 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

(B) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #126 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

(C) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #127 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

(D) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #128 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

(E) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #129 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

(F) A non-exclusive easement for the use of trucks, trailers, and loading dock facilities in the Plans located on land identified as #130 in the Plans, for the purpose of providing for the receipt, storage, and shipment of materials and equipment and for other similar purposes for which the use of such residential or apartment buildings and conditions not herein mentioned.

PROPERTY

2.2 The following perpetual easements burdening the Hotel Property and benefitting the Residential Property are hereby declared and created:

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

(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Hotel Property and connected to Facilities at any time located in the Residential Property (and any replacements thereof) which provide or shall be necessary to provide the Residential Property with any utilities or other services or which may be otherwise necessary to the operation of the Residential Property and (ii) permitting the exercise of the rights granted to the Owner of the Residential Property pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Residential Building encroaches or shall hereafter encroach upon any part of the Hotel Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Residential Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Hotel Property by the Owner of the Hotel Property.

(D) An exclusive easement for the Maintenance of Residential Easement Facilities, subject to the rights of the Owner of the Hotel Property granted pursuant to Section 6.6(A) hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Hotel Property.

(F) A non-exclusive easement over, on, across and through the Hotel Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Residential Property as required or





permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 2.2, (ii) during an Emergency Situation or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(G) A non-exclusive easement for pedestrian ingress and egress over, on, across and through level 7 of the Hotel Property to and from the residential elevator lobby (identified as #708 in the Plans) located on level 7 of the Residential Property.

2.3 Each Easement created under this Article II which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property or the Hotel Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Building or the Owner of the Hotel Property may, from time to time after consultation with the Owner of the Residential Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Commercial Building and the Hotel Property and in order to assure the reasonable security of the Commercial Building and the Hotel Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

2.4 Easements provided for, declared or created (a) under Section 2.1 shall be binding upon the Commercial Property and the Owner of the Commercial Property and (b) under Section 2.2 shall be binding upon the Hotel Property and the Owner of the Hotel Property, and, subject to the provisions of Article XX, all of such Easements (i) shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property and (ii) if and so long as the Residential Property is submitted to the Act, shall be part of the Common Elements.

2.5 Each of the Owner of the Commercial Building and the Owner of the Hotel Property shall have the right, at its sole cost and expense, to relocate within its Property any Facilities and Easements which burden its Property and benefit the Residential Property, other than Easements declared or created under Sections 2.1(A), 2.1(C), 2.2(A) and 2.2(C), so long as such relocation does not have a material adverse effect on the Residential Property or the use of the Residential Property.





ARTICLE III

Easements Benefitting the Hotel Property

3.1 The following perpetual easements burdening the Commercial Property and benefitting the Hotel Property are hereby declared and created:

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

(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Commercial Property and connected to Facilities at any time located in the Hotel Property (and any replacements thereof) which provide or shall be necessary to provide the Hotel Property with any utilities or other services or which may otherwise be necessary to the operation of the Hotel Property, and (ii) permitting the exercise of the rights granted to the Owner of the Hotel Property pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Hotel Building encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Hotel Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Commercial Property by the Owner of the Commercial Property.

(D) An exclusive easement for the Maintenance of Hotel Easement Facilities, subject to the rights of the Owner of the Commercial Building granted pursuant to Section 6.6(A) hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the truck ramps (identified as #160 and #LL283 in the Plans), the trucking concourse and loading dock (identified as #LL282 and #LL279 in the Plans), the service corridors (identified as #LL271, #LL268, #LL265 and #LL205 in the Plans) and the elevator vestibule

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ARTICLE 11

Leasables described in the lease agreement.

11.1 The following paragraph shall constitute the Commercial Property and benefiting the Hotel Property as defined herein and created:

(A) A non-exclusive easement in and to all of the members, meetings, classes, seminars, conferences and any other supporting component located within the part of the Commercial Property for the purpose of the Building and (ii) the facilities located within the Building with respect to which the easement is granted as set forth in this agreement.

(B) A non-exclusive easement in and to all of the intended purposes of all facilities of the Commercial Property and connected or contiguous thereto located in the Hotel Property (and any other facilities) provide or shall be necessary to provide for the use of any utilities or other services which are necessary to the operation of the Hotel Property, including but not limited to the operation of the Hotel Property, in which said rights may be exercised.

(C) An exclusive easement in and to all of the event and to the extent of the use of the Hotel Property for the purpose of the Hotel Property, including but not limited to the operation of the Hotel Property, in which said rights may be exercised.

(D) An exclusive easement for the Hotel Property for the purpose of the Hotel Property, including but not limited to the operation of the Hotel Property, in which said rights may be exercised.

(E) A non-exclusive easement in and to all of the persons, material and equipment used in the operation of the Hotel Property, including but not limited to the operation of the Hotel Property, in which said rights may be exercised.

(identified as #LL270 in the Plans) located in the Commercial Property, to and from the receiving room (identified as #LL294 in the Plans), the storage room (identified as #LL269 in the Plans) and the elevator shafts housing elevator Nos. 24, 25, 26, 27, 32 and 33 located in the Hotel Property.

(F) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Commercial Property.

(G) A non-exclusive easement for the use of the trucking concourse and loading dock (identified as #LL282 and #LL279 in the Plans) located on lower level 2 of the Commercial Building for the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in a hotel building, subject, however, to the terms and conditions set forth in Exhibit 6.1(7) attached hereto.

(H) A non-exclusive easement over, on, across and through the Commercial Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Hotel Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1, (ii) during an Emergency Situation, or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(I) A non-exclusive easement for the use of the Operator's Platform located on the 67th level roof of the Building for the purpose of cleaning the exterior windows and facade of the Hotel Building, or any portion thereof, and maintaining, repairing and replacing the exterior of the Hotel Building (including facade, walls, windows, screens and the like), subject, however, to the terms and conditions set forth in Exhibit 6.1(7) attached hereto.

(J) A non-exclusive easement for pedestrian ingress and egress over, on, across and through the Garage and the mall corridor (identified as #657 in the Plans) located in the Commercial Property to and from the elevator lobby (identified as #631 in the Plans) located in the Hotel Property.

(K) An exclusive easement for the use of the terrace portions of the level 30 roof of the Building.

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(Identified as 411270 in the Plans) located in the Hotel property, to and from the receiving room (Identified as 411270 in the Plans) the storage room (Identified as 411270 in the Plans) and the elevator shafts located in the Hotel property and is located in the Hotel property.

(K) A non-exclusive easement for the use of personal materials and equipment over the common or limited common portions of the common or limited common areas (as defined in the Commercial Property Act) in the Commercial Property.

(L) A non-exclusive easement for the use of trucking concourse and loading dock facilities (Identified as 411270 in the Plans) located in the Hotel Building for the receipt, storage, and distribution of materials and equipment and for the use of similar purposes for which such areas are used in the Hotel Building, subject to the terms and conditions set forth in Exhibit A-11(a) attached hereto.

(M) A non-exclusive easement for the use of the Commercial Property for the purpose of (i) to permit the maintenance, repair, and reconstruction of the Hotel Building and (ii) during an Emergency Easement, to allow the owner to exercise the Easement for the purpose of necessary to exercise the Easement for the purpose of maintain subsists or additional structural support under Article V hereof.

(N) A non-exclusive easement for the use of Operator's Easement located on the Hotel Building for the purpose of allowing the use of the Hotel Building for the purpose of and receiving the exterior of the Hotel Building, including, but not limited to, the use of the Hotel Building for the purpose of receiving, storing, and shipping goods, materials, and equipment, and for the use of the Hotel Building for the purpose of receiving, storing, and shipping goods, materials, and equipment, and for the use of the Hotel Building for the purpose of receiving, storing, and shipping goods, materials, and equipment.

(O) A non-exclusive easement for the use of the Commercial Property for the purpose of (i) to permit the maintenance, repair, and reconstruction of the Hotel Building and (ii) during an Emergency Easement, to allow the owner to exercise the Easement for the purpose of necessary to exercise the Easement for the purpose of maintain subsists or additional structural support under Article V hereof.

(P) An exclusive easement for the use of the Commercial Property for the purpose of (i) to permit the maintenance, repair, and reconstruction of the Hotel Building and (ii) during an Emergency Easement, to allow the owner to exercise the Easement for the purpose of necessary to exercise the Easement for the purpose of maintain subsists or additional structural support under Article V hereof.

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(L) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the vestibule (identified as #123 in the Plans) located in the ground level valet parking lobby in the Commercial Property to and from the hotel lobby (identified as #126 in the Plans) located in the ground level lobby in the Hotel Property.

(M) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the corridor (identified as #2914 in the Plans) located on level 29 in the Commercial Property to and from the mechanical room (identified as #2912 in the Plans) located on level 29 in the Hotel Property.

(N) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the mall corridors (identified as #630 and #657 in the Plans), the vestibule (identified as #632 in the Plans) and the elevator lobby (identified as #621 in the Plans) located on level 6 in the Commercial Property to and from the elevator pits housing elevator Nos. 28, 29, 30, 31, 35, 36 and 37 (identified as #623, #615 and #628 in the Plans) located on level 6 in the Hotel Property.

3.2 The following perpetual easements burdening the Residential Property and benefitting the Hotel Property are hereby declared and created:

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

(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Residential Property and connected to Facilities at any time located in the Hotel Property (and any replacements thereof) which provide or shall be necessary to provide the Hotel Property with any utilities or other services or which may be otherwise necessary to the operation of the Hotel Property and (ii) permitting the exercise of the rights granted to the Owner of the Hotel Property pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any





part of the Building, any part of the Hotel Building encroaches or shall hereafter encroach upon any part of the Residential Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Hotel Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Residential Property by the Owner of the Residential Property.

(D) An exclusive easement for the Maintenance of Hotel Easement Facilities, subject to the rights of the Owner of the Residential Property granted pursuant to Section 6.6(A) hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Residential Property occupied by the shafts housing elevators designated as Nos. 38, 39, 40 and 41 as shown in the Plans and the adjacent elevator vestibules, including the right to use such elevators, located within the Residential Property on the terms and conditions set forth in Exhibit 6.2(B) attached hereto.

(F) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Residential Property.

(G) A non-exclusive easement over, on, across and through the Residential Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Hotel Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.2, (ii) during an Emergency Situation or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(H) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the elevator lobby (identified as #4812 in the Plans) and corridor (identified as #4810 in the Plans) located on level 43 in the Residential Property to and from the elevator machine rooms (identified as #4809, #4815 and #4816 in the Plans) located on level 48 in the Hotel Property.

3.3 Each Easement created under this Article III which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property or the Residential Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Building or the Owner of the Residential Property may, from time



to time after consultation with the Owner of the Hotel Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Commercial Building and the Residential Property and in order to assure the reasonable security of the Commercial Building and the Residential Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

3.4 Easements provided for, declared or created (a) under Section 3.1 shall be binding upon the Commercial Property and the Owner of the Commercial Property and (b) under Section 3.2 shall be binding upon the Residential Property and the Owner of the Residential Property, and all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the Hotel Property.

3.5 Each of the Owner of the Commercial Building and the Owner of the Residential Property shall have the right, at its sole cost and expense, to relocate within its Property any Facilities and Easements which burden its Property and benefit the Hotel Property, other than Easements declared or created under Sections 3.1(A), 3.1(C), 3.2(A) and 3.2(C), so long as such relocation does not have a material adverse effect on the Hotel Property or the business operations conducted on the Hotel Property.

#### ARTICLE IV

##### Easements Benefitting the Commercial Property

4.1 The following perpetual easements burdening the Residential Property and benefitting the Commercial Property are hereby declared and created:

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

(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Residential Property and connected to Facilities at any time located in the Commercial Property (and any replacements thereof)







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which provide or shall be necessary to provide the Commercial Property with any utilities or other services or which may otherwise be necessary to the operation of the Commercial Property and (ii) permitting the exercise of rights granted to the Owner of the Commercial Building pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Commercial Property encroaches or shall hereafter encroach upon any part of the Residential Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Commercial Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Residential Property by the Owner of the Residential Property.

(D) An exclusive easement for the Maintenance of Commercial Easement Facilities, subject to the rights of the Owner of the Residential Property granted pursuant to Section 6.6(A) hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Residential Property occupied by the shafts housing elevators designated as Nos. 38, 39, 40 and 41 as shown in the Plans and the adjacent elevator vestibules, including the right to use such elevators, located within the Residential Property on the terms and conditions set forth in Exhibit 6.2(B) attached hereto.

(F) A non-exclusive easement to employ the intermittent platform stabilization buttons, supports and accessories on the exterior surface of the Residential Building to transport the Operator's Platform to and from the several portions of the Building.

(G) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Residential Property.

(H) A non-exclusive easement over, on, across and through the Residential Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the

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which provide or shall be necessary to provide for the  
property with any utilities or other services or  
otherwise be necessary to the operation of the building  
and (ii) permitting the extension of the building  
the Commercial Building program to be in effect  
any period in which said building is occupied.

(C) An exclusive license shall be granted to the  
the event and to the extent that the licensee shall  
construction of the building, any alterations,  
surveying errors, or the building, or any part  
part of the building, or shall be held liable for  
enclosures or shall be held liable for any  
Residential Period. Such a license shall only  
exist only as long as the licensee shall  
obligations to exist. It shall be the  
enclosed to be placed in front of the  
such encroachment management, and shall be  
and enjoyment of the Residential Property.  
Residential Property.

(D) An exclusive license shall be granted to the  
Commercial Building Period. Such a license shall  
of the Residential Property shall be in effect  
period.

(E) A non-exclusive license shall be granted to  
persons, natural and artificial, to use any  
portion of the Residential Property, including  
elevators designated as such in the  
plans and the adjacent areas, including  
use such elevators. However, the license shall be  
terms and conditions set forth in the

(F) A non-exclusive license shall be granted to  
platform (including but not limited to the  
exterior surface of the Residential Building  
Operator a Platform and any other structure  
Building.

(G) A non-exclusive license shall be granted to  
persons, natural and artificial, to use any  
sections of the property on the exterior  
time in the Residential Property.

(H) A non-exclusive license shall be granted to  
through the Residential Property to the  
(i) to permit the maintenance, repair,  
restoration or reconstruction of the  
required or permitted pursuant to this

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extent reasonably necessary to exercise the Easements set forth in this Section 4.1, (ii) during an Emergency Situation, or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(I) A non-exclusive easement for the use of risers and shafts within the Residential Property for the extension of Facilities necessary for the operation of a satellite receiving station, antennas and any other related equipment on the 67th level roof of the Building.

4.2 The following perpetual easements burdening the Hotel Property and benefitting the Commercial Property are hereby declared and created:

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

(B) A non-exclusive easement (i) for the use for their intended purposes of all Facilities located in the Hotel Property and connected to Facilities located in the Commercial Property (and any replacements thereof) which provide or shall be necessary to provide the Commercial Property with any utilities or other services or which may otherwise be necessary to the operation of the Commercial Property and (ii) permitting the exercise of rights granted to the Owner of the Commercial Building pursuant to Section 6.6(A) hereof during any period in which said rights may be exercised.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Commercial Property encroaches or shall hereafter encroach upon any part of the Hotel Parcel. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Commercial Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Hotel Property by the Owner of the Hotel Property.

(D) An exclusive easement for the Maintenance of Commercial Easement Facilities, subject to the rights of the Owner of the Hotel Property granted pursuant to Section 6.6(A) hereof.





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(E) A non-exclusive easement to employ the intermittent platform stabilization buttons, supports and accessories on the exterior surface of the Hotel Building to transport the Operator's Platform to and from the several portions of the Building.

(F) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways located, from time to time, in the Hotel Property.

(G) A non-exclusive easement over, on, across and through the Hotel Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.2, (ii) during an Emergency Situation, or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(H) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the corridors (identified as #3130 and #3138 in the Plans) and elevator lobby (identified as #3137 in the Plans) located on level 31 of the Hotel Property to and from the elevator machine room (identified as #3146 in the Plans) located on level 31 of the Commercial Property.

4.3 Each Easement created under this Article IV which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property or the Hotel Property, shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Residential Property or the Owner of the Hotel Property may, from time to time after consultation with the Owner of the Commercial Building, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Residential Property and the Hotel Property and in order to assure the reasonable security of the Residential Property and the Hotel Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

4.4 Easements provided for, declared or created (a) under Section 4.1 shall be binding upon the Residential Property and the Owner of the Residential Property and (b) under Section 4.2 shall be binding upon the Hotel Property and the Owner of the Hotel

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Property, and all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property.

4.5 Each of the Owner of the Hotel Property and the Owner of the Residential Property shall have the right, at its sole cost and expense, to relocate within its Property any Facilities and Easements which burden its Property and benefit the Commercial Property, other than Easements declared or created under Sections 4.1(A), 4.1(C), 4.2(A) and 4.2(C), so long as such relocation does not have a material adverse effect on the Commercial Property or the business operations conducted on the Commercial Property.

ARTICLE V

Structural Support

5.1 No Owner nor the Owner of the Commercial Parcel shall take any action which would adversely affect the structural safety or integrity of the Building.

5.2 If for any reason the structural support for any portion of the Building is hereafter reduced below the support required to maintain the structural safety or integrity of the Building, the Architect shall review, at the request of any of the Owners or the Owner of the Commercial Parcel, the extent of any such reduction and the need for or adequacy of any such substitute or additional structural support. The Architect shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support.

5.3 If substitute or additional structural support is required in a portion of the Building in which the structural support shall have been reduced, then the Owner or Owners responsible for such reduction, if the responsible Owner or Owners can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by or approved by the Architect and approved by the Owners, the Owner of the Commercial Parcel and the holders of the First Mortgages. The responsible Owner or Owners shall pay all costs and expenses, including, without limitation, the Architect's and any other architectural fees, in connection with construction of the substitute or additional support. The Owners shall attempt in good faith to determine which Owner or Owners are responsible for such reduction, which determination shall be subject to the approval of (i) the holder of the First Commercial Mortgage in the

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Property, and all of such easements shall be deemed to inure to the benefit of and be appurtenant to the Property.

4.2 Each of the Owner of the Property shall be deemed to have agreed to release with the Property the easements and other burdens on the Property, other than easements, other than those listed in 4.1(A), 4.1(C), 4.2(A) and 4.2(B), in order that the Property shall not have a material adverse effect on the business operations conducted on the Property.

5.1 No Owner shall take any action which would materially affect the integrity of the building.

5.2 If for any reason the building is required to be repaired or replaced, the Owner shall be deemed to have agreed to maintain the structural integrity of the building and to provide structural support. If the repair or replacement is possible, the Owner shall be deemed to have agreed to provide structural support. If the repair or replacement is not possible, the Owner shall be deemed to have agreed to provide structural support.

5.3 If any portion of the building is required to be repaired or replaced, the Owner shall be deemed to have agreed to provide structural support. If the repair or replacement is possible, the Owner shall be deemed to have agreed to provide structural support. If the repair or replacement is not possible, the Owner shall be deemed to have agreed to provide structural support.

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event that the Owner of the Commercial Building is determined to be responsible either alone or together with any other Owner, (ii) the holder of the First Hotel Mortgage in the event that the Owner of the Hotel Property is determined to be responsible either alone or together with any other Owner, and/or (ii) the holder of the First Residential Mortgage in the event that the Owner of the Residential Property is determined to be responsible either alone or together with any other Owner. If such parties are unable, within thirty (30) days after such reduction is discovered, to agree which Owner or Owners are responsible for such reduction, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree which Owner or Owners are responsible for such reduction, then such determination shall be made by arbitration pursuant to Article XII hereof.

5.4 In the event that the Owner or Owners determined responsible for the reduction in structural support fail to commence the construction of substitute or additional support within a reasonable time under the circumstances, or having commenced such construction fails to proceed diligently to its completion, any Creditor Owner shall have the right to complete the construction of such substitute or additional support at the expense of the Defaulting Owner, and all costs and expenses incurred by Creditor Owner shall be due from the Defaulting Owner on demand.

5.5 If delay in constructing substitute or additional support would endanger the structural safety or integrity of the Building, then, without regard to which Owner or Owners shall be determined responsible for the reduction, the Owner of the portion of the Building in which the reduction shall have occurred or is then occurring shall, upon not less than ten (10) days advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or the Owners shall together undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any required substitute or additional support. If the responsible Owner or Owners cannot be determined, or if all Owners are responsible, or if the reduction in structural support results from a defect in the original construction or design of the Building, an act of God or force majeure, then the Owners shall share the cost of providing substitute or additional structural support, including, without limitation, any fees of the Architect, in the manner agreed to by the Owners. If the Owners cannot agree, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on the sharing of such costs, then







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such determination shall be made by arbitration pursuant to Article XII hereof. The foregoing shall not be deemed to limit any rights any of the Owners may have against third parties.

## ARTICLE VI

### Building Services

6.1 The Owner of the Commercial Building shall furnish or cause to be furnished the following services to the Owner of the Residential Property and the Owner of the Hotel Property when, as and if required:

(A) Chilled Water. Production and circulation of chilled water upon the terms and conditions set forth in Exhibit 6.1(A).

(B) Emergency Power. Emergency electrical service upon the terms and conditions set forth in Exhibit 6.1(B).

(C) City Water. Supply city water upon the terms and conditions set forth in Exhibit 6.1(C).

(D) Fire Alarm and Emergency Telephone Systems. Maintenance of Building's facilities which monitor the Building's fire alarm and emergency telephone systems upon the terms and conditions set forth in Exhibit 6.1(D).

(E) Loading Dock and Trash Removal. Maintenance of (i) the service area and loading dock and all roadways, ramps and other means of access thereto located within the Commercial Property and (ii) trash removal service for compacted trash, all upon the terms and conditions set forth in Exhibit 6.1(E).

(F) Exterior Lighting. Maintenance of all exterior lighting of the Building upon the terms and conditions set forth in Exhibit 6.1(F).

(G) Facade. Maintenance of the Building facade upon the terms and conditions, and solely to the extent, set forth in Exhibit 6.1(G).

(H) Security. Provide continuous security service for the loading dock and service entrance and monitor certain portions of the Building and all stairwell alarms upon the terms and conditions set forth in Exhibit 6.1(H).

(I) Street Level Exterior Maintenance and Snow Removal. Snow removal and Maintenance of the canopy over the street level entrance to the Hotel Lobby and Residential Lobby, and curb cuts,

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such determination shall be made by arbitration in accordance with Article XII hereof. The foregoing shall not be construed to limit any rights any of the Owners may have against third parties.

## ARTICLE VI

### Rolling Shutter

6.1 The Owner of the Commercial Building shall cause to be furnished the following schedule of work for Residential Property and the Owner of the said Residential Property and if required:

(A) Chilled Water. Maintenance of chilled water upon the terms and conditions set forth in Exhibit 6.1(A).

(B) Emergency Power. Maintenance of emergency power upon the terms and conditions set forth in Exhibit 6.1(B).

(C) City Water. Supply of city water upon the terms and conditions set forth in Exhibit 6.1(C).

(D) Fire Alarm and Emergency. Maintenance of building's fire alarm and emergency system upon the terms and conditions set forth in Exhibit 6.1(D).

(E) Loading Dock and Service Area. Maintenance of the service area and loading dock upon the terms and conditions set forth in Exhibit 6.1(E).

(F) Exterior Lighting. Maintenance of exterior lighting of the building upon the terms and conditions set forth in Exhibit 6.1(F).

(G) Escalator. Maintenance of the escalator upon the terms and conditions set forth in Exhibit 6.1(G).

(H) Security. Provision of security services for the loading dock and service area upon the terms and conditions set forth in Exhibit 6.1(H).

(I) Street Level Entrance. Maintenance of the street level entrance to the hotel lobby and residential lobby upon the terms and conditions set forth in Exhibit 6.1(I).

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sidewalks, trees, tree lights, tree pits, stone containers and other improvements along North Michigan Avenue, North Rush Street, East Walton Street and East Delaware Street and Maintenance of Ernst Court between East North Walton Street and East Delaware Street, upon the terms and conditions set forth in Exhibit 6.1(I).

(J) Operator's Platforms. Maintenance of the Operator's Platforms upon the terms and conditions set forth in Exhibit 6.1(J).

(K) Roofs. Maintenance of the various roofs of the Building, upon the terms and conditions set forth in Exhibit 6.1(K).

(L) Intentionally Omitted.

(M) Fire Suppression System. Maintenance of the fire suppression system for the Hotel Property and the Residential Property upon the terms and conditions set forth in Exhibit 6.1(M).

(N) Secondary Condenser Water System. Maintenance of the secondary condenser water system for the Hotel Property and the Residential Property upon the terms and conditions set forth in Exhibit 6.1(N).

6.2 The Owner of the Residential Property shall furnish or cause to be furnished the following services to the Owner of the Commercial Building and the Owner of the Hotel Property when, as and if required:

(A) Water Redelivery. Redelivery of water upon the terms and conditions set forth in Exhibit 6.2(A).

(B) Elevator Service. Maintenance of service elevator No. 41 (as shown on the Plans) and passenger elevators Nos. 38, 39 and 40 (as shown on the Plans) when service elevator No. 41 is unavailable, all upon the terms and conditions set forth in Exhibit 6.2(B).

6.3 Intentionally Omitted.

6.4 Each Owner shall make a good-faith effort to operate its Facilities and furnish all services as required under this Article VI in a manner which will provide each Owner with comfortable occupancy and enjoyment of its respective portion of the Building for its intended use as first-class commercial, hotel or residential property, but in no event shall an Owner be obligated to use more than reasonable diligence in performing the services required of such Owner under this Article VI, be liable for





consequential damages for failure to perform hereunder or be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service hereunder at any reasonable time and for a reasonable period of time to the extent reasonably necessary to perform Maintenance or in an Emergency Situation.

6.5 Payment for services rendered pursuant to Article VI hereof and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of Exhibit 6.5.

6.6 (A) If any Owner shall fail to (i) perform the services required to be performed by it pursuant to this Article VI (except when such failure is caused by any other Owner, Unavoidable Delay or such Owner is entitled to discontinue such service pursuant to Section 6.7 hereof), or (ii) perform its obligations under Section 10.1 hereof, and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner from any other Owner, such other Owner shall have the right to perform the same until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation.

(B) During any period in which any Creditor Owner is performing pursuant to this Section 6.6, the Defaulting Owner shall make payments to the Creditor Owner as provided in Paragraph 7 of Exhibit 6.5.

6.7 If at any time a Defaulting Owner fails to pay to a Creditor Owner any sum of money payable to such Creditor Owner pursuant to the provisions of Section 6.5 hereof within ten (10) days after receipt of written notice from such Creditor Owner demanding payment of said sum of money, then such Creditor Owner may discontinue furnishing to the Defaulting Owner the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes its obligation to pay said sum of money, pays the undisputed portion of said sum and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner may not discontinue furnishing any such services to the Defaulting Owner unless and until it shall finally be determined by arbitration in accordance with Article XII hereof or by a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains





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unpaid; and further provided, however, that Creditor Owner may not discontinue any such services if such discontinuance would cause an Emergency Situation or hinder steps to remedy or otherwise exacerbate an existing Emergency Situation.

6.8 The Owner of the Commercial Building shall have the right, from time to time, to reallocate among the Owners in a fair and reasonable manner the cost of any item of Maintenance under this Article VI if it determines that such cost is not reasonably allocated among the Owners; provided, however, that if any such reallocation has a material impact on any of the Owners, any such Owner shall have the right to submit the issue of the reasonableness of such reallocation to arbitration pursuant to Article XII hereof.

6.9 An Owner obligated to perform Maintenance of Facilities shall, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better and providing substantially the same quality of service or better.

6.10 If at any time the actual allocation of cost of Maintenance based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the Owner performing such Maintenance shall make such reasonable determination of costs based on usage, using such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the other Owners in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a Projection Notice or Statement (as such terms are defined in Exhibit 6.5) or statement of net capitalized cost under Exhibit 6.5 relating to such Maintenance. If, within thirty (30) days after receipt of such notice, the Owners receiving such notice do not, in good faith, dispute that such method of estimating usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties; provided, however, that said determination shall in any event be subject to the approval of the holders of the First Mortgages; provided further, however, if any Owner receiving such notice, in good faith, disputes that the method of estimating usage has been determined reasonably, he shall so notify the other Owners. If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then the Owners shall submit the question to the Architect for its determination, which determination shall be final and binding on the Owners, the Owner of the Commercial Parcel and the holders of the First Mortgages.



ARTICLE VII

Compliance With Laws; Removal Of Liens

7.1 The Owners and the Owner of the Commercial Parcel shall each comply with all laws, codes, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, City of Chicago and any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Total Parcel, the Building or any portion thereof, if noncompliance would subject the other Owners, the Owner of the Commercial Parcel or any of the holders of the First Mortgages to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to such other Owners or for the Building itself or would jeopardize the Owner of the Commercial Parcel or such other Owner's or Owners' right to occupy or utilize beneficially their respective portion or portions of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of the other Owners or the Owner of the Commercial Parcel.

7.2 The Owners shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Total Property or any portion thereof and the requirements of any insurance policy affecting insurance coverage on any of the other Owners' portion of the Total Property, if noncompliance by it with respect to its portion of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owners or the premiums of any policy of insurance maintained by all Owners, or (ii) render any of the other Owners' portion of the Total Property uninsurable, or (iii) create a valid defense to any of the other Owners' right to collect insurance proceeds under policies insuring such other Owner's portion of the Total Property; provided, that this paragraph shall not apply to insurance policies of individual Unit Owners; provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any of the other Owners' portion of the Total Property, such other Owner or Owners shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any of the other Owners, then any Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then each







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Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. Each Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in connection with causing any such compliance to occur.

7.3 Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Owner's or the Owner of the Commercial Parcel's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement created hereunder or services to be furnished pursuant to Article VI hereof, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, each Creditor Owner may take such action as such Creditor Owner may deem necessary to remove such lien. Each Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in removing or attempting to remove such lien. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien so long as within said thirty (30) day period such lien cannot be foreclosed and the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to each Creditor Owner and the Owner of the Commercial Parcel of its intention to contest the validity or amount of such lien and (B) shall deliver to each Creditor Owner (and the Owner of the Commercial Parcel if the lien is on the Commercial Parcel) either: (i) cash or a surety bond from a responsible surety company acceptable to such Creditor Owner (and to the Owner of the Commercial Parcel and the holder of the First Commercial Mortgage if such Creditor Owner is the Owner of the Commercial Building, to the holder of the First Hotel Mortgage if such Creditor Owner is the Owner of the Hotel Property or to the holder of the First Residential Mortgage if such Creditor Owner is the Owner of the Residential Property) in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to such Creditor Owner (and to the Owner of the Commercial Parcel and the holder of the First Commercial Mortgage if such Creditor Owner is the Owner of the Commercial Building, to the holder of the First Hotel Mortgage if such Creditor Owner is the Owner of the Hotel Property or to the holder of the First Residential Mortgage if such Creditor Owner is the Owner of the Residential Property).

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7.3. Each Owner shall...  
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like lien on any...  
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portion of the...  
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VI hereof...  
any and...  
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Each...  
Defaulting...  
Credit...  
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day period...  
(A) shall...  
appropriate...  
Credit...  
intention to...  
shall deliver...  
Commercial...  
(1) Cash...  
acceptable...  
Commercial...  
if such...  
the holder...  
the Owner...  
Residential...  
Residential...  
percent (100%)...  
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if such...  
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Property of Cook County Clerk

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7.4 Each of the Owners and the Owner of the Commercial Parcel (hereinafter in this Section 7.4, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners and the Owner of the Commercial Parcel (hereinafter in this Section 7.4, the "Indemnitees") from and against any and all claims against Indemnitees for losses, liabilities (civil or criminal), damages, judgments, costs and expenses, and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental or quasi-governmental authority, other than the Indemnitees, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against any of the Indemnitees by reason of any such claim, Indemnifying Owner, upon notice from any such Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitees.

## ARTICLE VIII

### Real Estate Taxes

8.1 The Owners and the Owner of the Commercial Parcel agree to file a tax division petition with the Assessor of Cook County, Illinois (the "Assessor") to obtain separate real estate tax parcel identification numbers and separate real estate tax bills for their respective portions of the Total Property, if such a petition has not heretofore been filed. When separate real estate tax bills are received, the Owner of the Commercial Building shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Commercial Property, the Owner of the Hotel Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Hotel Property and the Owner of the Residential Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Residential Property. Each Unit Owner shall pay the real estate taxes, special assessments, and any and all other taxes and assessments of every kind and nature levied upon his Unit Ownership.





8.2 (A) At any time that the Commercial Property, Hotel Property and Residential Property are not separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon or with respect to the Total Property. Each Owner's portion of such taxes and assessments shall be determined by the Owner of the Commercial Building in a fair and reasonable manner.

(B) Upon receipt of the real estate tax bills for the Total Property, the Owner of the Commercial Building shall forward a copy of same to the Owner of the Hotel Property and the Owner of the Residential Property, together with the Owner of the Commercial Building's determination of their respective shares of such tax bills. The Owner of the Hotel Property and the Owner of the Residential Property shall each deliver to the Owner of the Commercial Building a cashier's or certified check made payable to the Cook County Collector for its allocable share, as determined by the Owner of the Commercial Building, of the tax bills within five (5) days after demand is made therefor by the Owner of the Commercial Building. The Owner of the Commercial Building shall forward such checks with the Owner of the Commercial Property's share of the tax bills to the Cook County Collector and shall forward a copy of the receipt for same to the Owner of the Hotel Property and the Owner of the Residential Property when it is received.

(C) If the Owner of the Commercial Property attempts to obtain a lowering of the assessed valuation upon the Total Property or takes other action for the purpose of reducing taxes thereon with respect to any period prior to the time that the Commercial Property, the Hotel Property and the Residential Property are separately assessed and taxed, the Owner of the Hotel Property and the Owner of the Residential Property shall cooperate with the Owner of the Commercial Property in such attempt and shall each share in the costs incurred in proportion to its share of the real estate taxes. Any tax refund received as a result of such action shall be apportioned between the Owners in accordance with their respective portions of the real estate taxes. Nothing contained herein shall affect the independent right of each Owner to protest taxes and other charges to the extent the same affect only such Owner's portion of the Total Property.

8.3 If, prior to the time separate tax bills are obtained, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Owner is obligated to pay pursuant to this Article VIII, and if such unpaid tax or charge is a lien or encumbrance on the portion of the Total Property owned by any of the other Owners, or if any lawful authority would have the right to sell or otherwise foreclose against the portion of



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8.2 (A) At any time that the Commercial Property and Residential Property are not separately assessed, each Owner shall pay the total amount of all assessments of every kind or nature levied on the Total Property. Each Owner's share of the assessments shall be determined by the relative value of the Building in a fair and reasonable manner.

(B) Upon receipt of the bill for the Total Property, the Owner of the Commercial Property shall forward a copy of same to the Owner of the Residential Property. The Commercial Property Owner shall determine the amount of the Commercial Building's determination which shall be added to the Residential Property's determination to make up the total bill. The Owner of the Residential Property shall forward a copy of the Commercial Building's determination to the Cook County Collector for the Commercial Building a certain number of days before the date of the Commercial Building's bill. The Commercial Building's bill shall be forwarded to the Owner of the Residential Property by the Owner of the Commercial Building. The Commercial Building's bill shall be forwarded to the Owner of the Residential Property five (5) days after receipt of the Commercial Building's bill. The Commercial Building's bill shall be forwarded to the Owner of the Residential Property with the bill of the Commercial Building. The Commercial Building's bill shall be forwarded to the Owner of the Residential Property and the Owner of the Commercial Building a copy of the bill of the Commercial Building. The Commercial Building's bill shall be received.

(C) If the Owner of the Commercial Property obtains a lowering of the assessed value of the Commercial Property or takes other action which results in a reduction of the assessed value of the Commercial Property, the Owner of the Residential Property shall be notified of such action. The Owner of the Residential Property and the Owner of the Commercial Property shall each have in the Commercial Building's bill of the real estate taxes. Any reduction in the assessed value of the Commercial Building shall be applied to the Commercial Building's bill. Such action shall be applied to the Commercial Building's bill with their respective portions of the Commercial Building's bill. The Commercial Building's bill shall contain herein shall effect the reduction of the Commercial Building's bill to reflect such action and other changes to the Commercial Building's bill. Only such Owner's portion of the Commercial Building's bill shall be affected.

8.3 If, prior to the time that the Commercial Property and Residential Property are separately assessed, any Owner shall fail to pay any tax or other assessment, which is due and which is levied on the Commercial Property pursuant to this Article VIII, and if such Owner is not a lien or encumbrance on the Commercial Property, the Commercial Property shall be sold by any of the other owners or if such Owner is a lien or encumbrance on the Commercial Property, the Commercial Property shall be sold by the Commercial Property Owner.

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the Total Property owned by any of the other Owners or extinguish any Easement benefitting any of the other Owners by reason of such nonpayment, or subjects any of the other Owners to personal liability for the same, then each Creditor Owner may, after ten (10) days' written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse such Creditor Owner for the amount of such payment, including the amount of any interest or penalty amounts accrued thereon.

ARTICLE IX

Insurance

9.1 The Owners shall procure and maintain the following insurance:

(A) (i) The Owner of the Residential Property shall keep the Residential Building insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than one hundred percent (100%) (or such lesser percentage as may be permitted under the Act, but in no event less than ninety percent (90%) of the "Full Insurable Value" (as hereinafter defined) thereof. Insurance carried by the Owner of the Residential Property hereunder shall also include insurance of Residential Easement Facilities, which insurance shall be primary coverage with respect to any loss to the Residential Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which the Residential Easement Facilities are located being excess coverage, and the Owners shall obtain appropriate endorsements to prevent the insurance companies from raising the claim or defense of co-insurance or other like defenses or like claims adverse to the Owner of the Residential Property.

(ii) The Owner of the Commercial Building shall keep the Commercial Building insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than ninety percent (90%) of the Full Insurable Value thereof (or such greater amount as may be necessary to avoid co-insurance), but, in any event, not less than the greater of the amounts required by the Owner of the



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Commercial Parcel and the holder of the First Commercial Mortgage. Such coverage of the Commercial Building shall include coverage for loss of rental income caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts as may be carried by prudent owners of first-class commercial buildings in the City of Chicago, Illinois, or as may be required by the Owner of the Commercial Parcel and the holder of the First Commercial Mortgage. Insurance carried by the Owner of the Commercial Building hereunder shall also include insurance of Commercial Easement Facilities, which insurance shall be primary coverage with respect to any loss to the Commercial Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which the Commercial Easement Facilities are located being excess coverage, and the Owners shall obtain appropriate endorsements to prevent the insurance companies from raising the claim or defense of co-insurance or other like defenses or like claims adverse to the Owner of the Commercial Property.

(iii) The Owner of the Hotel Property shall keep the Hotel Building insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than ninety percent (90%) of the insurable replacement cost thereof (or such greater amount as may be necessary to avoid co-insurance), but, in any event, not less than the amount required by the holder of the First Hotel Mortgage. Such coverage of the Hotel Building shall include coverage for loss of income caused by business interruption or extra expenses incurred to reduce such loss of income, in such amounts as may be carried by prudent owners of first-class hotel buildings in the City of Chicago, Illinois, or as may be required by the holder of the First Hotel Mortgage. Insurance carried by the Owner of the Hotel Property hereunder shall also include insurance of Hotel Easement Facilities, which insurance shall be primary coverage with respect to any loss to the Hotel Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which the Hotel Easement Facilities are located being excess coverage, and the Owners shall obtain appropriate endorsements to prevent the insurance companies from raising the claim or





defense of co-insurance or other like defenses or like claims adverse to the Owner of the Hotel Property.

(iv) The term "Full Insurable Value" shall mean actual replacement cost (exclusive of cost of excavation, foundations and footings below the lowest basement floor) and shall be determined from time to time by an appraisal prepared by an independent appraiser chosen by the Owner of the Commercial Building, the cost of such appraisal to be shared by the Owners proportionately based on the Full Insurable Value of their respective portions of the Building. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause in accordance with such appraisal;

(B) Each Owner shall maintain comprehensive general liability insurance with broad form extensions covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about (i) the portion of the Total Property owned by such Owner, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), or (ii) any other portion of the Total Property as a result of the actions of such Owner or its lessees, agents or employees. Such insurance shall be primary coverage as to claims for injury or damage resulting from the acts or failure to act of an Owner, with any insurance carried by the other Owners being excess coverage. Such insurance shall be in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class commercial, hotel or residential buildings (as the case may be) in the City of Chicago, Illinois, but in all events with limits of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an additional \$20,000,000 umbrella coverage; and

(C) Each Owner shall insure its boiler and machinery risks, on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus owned by such Owner, consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment and piping and ducts on a repair or replacement basis for not less than ninety percent (90%) of the Full Insurable Value thereof (or such greater amount as may be necessary to avoid co-insurance), and also providing coverage for loss of income caused by business interruption or extra expense incurred to reduce such loss of



income or for loss of use arising from a failure of the Building equipment, machinery and apparatus owned by such Owner or the other Owners, in such amounts as may be carried by prudent owners of first-class commercial, hotel and residential buildings in the City of Chicago, Illinois, or as may be required by the holders of the First Mortgages. Such insurance carried by each Owner shall also include insurance of such Owner's Easement Facilities, which insurance shall be primary coverage with respect to any loss to such Owner's Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which such Easement Facilities are located being excess coverage.

9.2 Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized rating service. Insurance policies required by Sections 9.1(A) and 9.1(C) shall (a) be purchased from a single insurance company or group of companies designated by the Owner of the Commercial Building and shall contain the same terms and conditions of coverage and policy wording, and (b) provide for the adjustment of claims with the insurer by the Owner who obtained such policy and, if required by the terms of such Owner's First Mortgage, the holder of such First Mortgage and, with respect to any policy obtained by the Owner of the Commercial Building, the Owner of the Commercial Parcel. So long as the Residential Property remains subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the Condominium Declaration as being responsible for such insurance.

9.3 Each policy described in Section 9.1 hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under such policy; (ii) shall insure as named insured and additional named insureds, as the case may be, the Owner of the Commercial Property, the Owner of the Hotel Property and the Owner of the Residential Property, together with such affiliates of such owners as any of them may designate from time to time, all as their interests may appear; provided, however, that so long as the Residential Property shall remain submitted to the Act, the Association and not the individual Unit Owners of the Residential Property shall be insured as a named insured; (iii) shall provide, except for liability insurance described in Section 9.1(B), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive

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income or for loss of use arising from a failure of the  
equipment, machinery and apparatus owned or operated  
by other Owners in such amounts as may be determined  
of first-class commercial bond in the City of Chicago,  
Illinois, or in any other city or county in Illinois.  
The first mortgagee shall be deemed to be the mortgagee  
also include insurance of such property and the mortgagee  
insurer shall be primary mortgagee with respect to  
such Owner's Residence Facility. The mortgagee shall  
the Owner of the position of first mortgagee. The  
facilities are located being stated in the mortgage.

9.2. Insurance policies shall be purchased from  
insurers in the State of Illinois and shall be  
current policies. The mortgagee shall be deemed to be  
Rating of not less than A-1. The mortgagee shall be  
Reports of a satisfactory financial condition of the  
reconvened rating service. Sections 9.1(A) and 9.1(B) shall  
insured company or group of companies. The mortgagee  
the Commercial Building and the mortgagee shall be  
conditions of coverage and policy shall be subject to  
adjustment of claims with the mortgagee. The mortgagee  
such policy and, in agreement with the mortgagee, the  
Mortgage, the holder of such policy shall be deemed to be  
any policy obtained by the mortgagee. The mortgagee  
Owner of the Commercial Building. The mortgagee shall be  
Property remains subject to the mortgage. The mortgagee  
on additional, separate, policies. The mortgagee shall  
Individual Units shall be deemed to be the mortgagee  
designated in the mortgage. The mortgagee shall be deemed  
such insurance.

9.3. Each policy described in Section 9.2 shall  
provide that the knowledge or acts of mortgagee shall  
party shall not invalidate the policy. The mortgagee  
party or otherwise adversely affect the policy.  
insured party under such policy. The mortgagee shall  
insured and additional named insured. The mortgagee  
Owner of the Commercial Building. The mortgagee shall be  
and the Owner of the Residential Property. The mortgagee  
affiliates of such person as any of their interests  
to time, all as their interests may appear from time  
that so long as the Residential Property is insured  
the Act, the Association and not the mortgagee. The  
Residential Property shall be deemed to be the mortgagee  
shall provide, except for liability insurance, that the  
9.1(B), by endorsement or otherwise, that the mortgagee  
be invalidated should any of the insured under the policy.

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in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefitted by such endorsement or provision pays such increase; (iv) shall provide, except for (a) insurance for loss of rental income or loss of income covered by business interruption or extra expense incurred to reduce such loss of income, and (b) liability insurance required by Section 9.1(B), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article XVII hereof; (v) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all insureds thereunder and to the holders of the First Mortgages; and (vi) shall include a standard mortgagee endorsement or loss payable clause in favor of each of the holders of the First Mortgages in form satisfactory to it.

9.4 Limits of liability or types of insurance specified in this Article IX or carried by the Owners shall be reviewed by the Owners no less often than annually at least thirty (30) days before the expiration of each policy to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Section 9.1(A), 9.1(B) and 9.1(C) shall not exceed \$25,000.00. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration; provided that the Owner of the Commercial Building shall have the right, in its reasonable discretion, to increase, from time to time, the limits of liability for the insurance required under Section 9.1(B) and further provided that no agreement regarding a decrease in limits of liability, an increase in the deductible amounts to an amount in excess of \$125,000.00 or elimination of any types of coverages shall be effective without the written consent of the Owner of the Commercial Parcel and the holders of the First Mortgages.





9.5 Copies of all insurance policies, original certificates of insurance evidencing such policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner, to the Owner of the Commercial Parcel and to the holders of the First Mortgages at the time of the Conveyances and at least twenty (20) days prior to the expiration date of any such expiring insurance policy.

9.6 Should an Owner fail to provide and maintain any policy of insurance required under this Article IX or pay its share of the premiums or other costs for any joint policies, then the other Owners may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after the Creditor Owners' written demand therefor.

9.7 Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver or liability or recovery contained elsewhere in this Declaration, each of the Owners and the Owner of the Commercial Parcel, for itself and for each party claiming under, by or through such owner, hereby waives all claims for recovery from the other Owners and the Owner of the Commercial Parcel for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

## ARTICLE X

### Maintenance And Repair; Damage To The Building

10.1 Except as expressly provided in Sections 6.1, 6.2, 6.3 and 21.7 hereof relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article X in the event of fire or other casualty, and without limiting or diminishing each Owner's obligations under Article V, each Owner shall, at its sole cost and expense, keep its respective Property, its Easement Facilities and fixtures, equipment and appurtenances therein (including, without limitation, its portion of the Building facade and its kitchen waste interceptors), in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior

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9.5. Copies of all documents... of insurance evidencing such policies... all forms of conveyance... hereunder shall be delivered to the holder of the Commercial Parcel and to the holder of the... time of the conveyance and as to the... expiration date of any such...  
-

9.6. Should an owner fail to... of insurance required under the... the premiums or other costs for... Owners may purchase such... Defining Owner's share of... Defining Owner's share of... written demand therefor.

9.7. Provided that such a... respective policy or policies or... ability to collect under such... increase the premiums for such... to be benefited by such... limiting any release... elsewhere in this... the Commercial Parcel... under, by or through... recovery from the... for any loss or damage... required hereunder no... insurance policies to... which would have been... hereunder been obtained) under... deductible amounts.

ARTICLE X

Maintenance and Repair: Bands to the 5...

10.1. Except as expressly provided... and (b) parcel relating to maintenance... areas of the building or... event of fire or other... diminishing each owner's... shall, at the sole cost and... its essential facilities and... therein (including, without... Building facade and its... sale order and condition, and... requirements of, in, on and... property, whether said repairs or...

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or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise, and each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

10.2 If the Building is damaged by fire or other casualty and if such damage occurs in, on, under, within, upon or about (a) the Commercial Building only, (b) the Hotel Building only, (c) the Residential Building only or (d) any two such portions of the Building only, and does not in each instance affect the Easement Facilities of any other portion of the Building, then any such damage shall be repaired and restored by the Owner or Owners of the portion of the Building in which any such damage occurs in as timely a manner as practicable under the circumstances, and each such Owner shall, in accordance with the provisions of Article XVIII hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If the nature of the damage is such that it falls within the category set forth in cause (d) above, then the provision set forth in Section 10.3 with respect to the selection of a contractor and the preparation of the plans and specifications shall be applicable. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of such damage which adversely and materially affects an Easement in favor of any other Owner or services to be furnished any other Owner under Article VI hereof, then (i) each Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then such Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation each Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article XVIII hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds.







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10.3 If the Building is damaged by fire or other casualty and if the provisions of Section 10.2 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in Section 10.2 then the repair or restoration of such damage shall be the joint responsibility of the Owners. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of high-rise structures similar to the Building jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by arbitration pursuant to Article XII hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners otherwise agree, subject to the approval of the Owner of the Commercial Parcel and the holders of the First Mortgage, in accordance with instructions given by the Owners. Such plans and specifications shall provide for the Building to be rebuilt as nearly as commercially practicable to the Building as constructed prior to the damage unless prohibited by law or unless the Owners and the Owner of the Commercial Parcel otherwise agree, subject to the approval of the holders of the First Mortgage. The Architect shall furnish to each of the Owners, the Owner of the Commercial Parcel and each of the holders of the First Mortgage a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Owners otherwise agree any contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owner in whose portion of the Building such repair and restoration is being performed, and the Owner of the Commercial Parcel and the holder of the First Commercial Mortgage if the Commercial Building or any of the Commercial Easement Facilities are involved, the holder of the First Hotel Mortgage if the Hotel Building or any of the Hotel Easement Facilities are involved and the holder of the First Residential Mortgage if the Residential Building or any of the Residential Easement Facilities are involved, as such repair and restoration progresses, to disburse in accordance with Article XVIII hereof, the insurance proceeds held by the Depositary and any other monies deposited with the Depositary pursuant to Section 10.4 hereof for application against the cost and expense of any such repair and restoration.

10.4 If the cost and expense of performing any repair and restoration provided for in Section 10.3 hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of



the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there is no insurance proceeds) shall be borne by the Owners in proportion to the cost and expense of repairing to their former condition their respective portions of the Building; provided, however, that to the extent such excess cost and expense results from the failure of any Owner to maintain the amount of insurance required under Section 9.1 hereof, such Owner shall bear such portion of such excess cost and expense.

10.5 In any instance of repair or restoration pursuant to Sections 10.2, 10.3 or 10.4 hereof, any Owner or the Owner of the Commercial Parcel may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum theretofore has been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage (plus any applicable deductible), then any Owner, the Owner of the Commercial Parcel or any of the holders of the First Mortgages may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article X. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners, the Owner of the Commercial Parcel, the holders of the First Mortgages and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or an irrevocable loan commitment, satisfactory to the other Owners, the Owner of the Commercial Parcel and the holders of the First Mortgages, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 10.5, or fails to





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deliver the security provided for herein within ten (10) days after receipt of any other Owner's written demand therefor, then each Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse such Creditor Owner for such payment and such Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

10.6 Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by reason of such Owner's insurance bears to the total insurance proceeds made available by the insurer for the repair and restoration, or if the insurance is provided by a single policy covering the Building, then the ratio of insurance proceeds attributed to such Owner's portion of the Building by the insurer to the total insurance proceeds made available by the insurer for the repair and restoration. The right of the Owner of the Commercial Building to payment of excess insurance proceeds, if any, shall be subject to the rights of the holder of the First Commercial Mortgage under the First Commercial Mortgage with respect to any such excess insurance proceeds, the right of the Owner of the Hotel Property to payment of excess insurance proceeds, if any, shall be subject to the rights of the holder of the First Hotel Mortgage under the First Hotel Mortgage with respect to any such excess insurance proceeds and the right of the Owner of the Residential Property to payment of excess insurance proceeds, if any, shall be subject to the rights of the holder of the First Residential Mortgage under the First Residential Mortgage with respect to any such excess insurance proceeds.

10.7 If the Building is destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Building, subject to the written approval of the holders of the First Mortgages and the Owner of the Commercial Parcel, then the Building shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Building. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner's insurance to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Building, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building to the total insurance proceeds paid by reason of such damage. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections

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10.6 Upon completion of the repairs or restoration of the Building, any structural damage to the Building shall be repaired or replaced at the expense of the Owner of the Building, except to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building.

10.7 If the Building is damaged or destroyed by fire, explosion, or other cause, the Owner shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building.

10.8 The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building. The Contractor shall be responsible for the cost of such repairs or replacement to the extent that such damage or replacement is caused by the negligence of the Contractor or the negligence of any other Owner of the Building.

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10.3, 10.4, 10.5 and 10.8 hereof are applicable except that demolition, and not construction, shall be performed. In the event the Owners agree not to rebuild the Building, subject to the written approval of the holders of the First Mortgages and the Owner of the Commercial Parcel, they may also make provision (i) for sale of the Total Property by the Owners and the Owner of the Commercial Parcel and distribution of sale proceeds, or (ii) for ownership of the Total Property by the Owners and the Owner of the Commercial Parcel as tenants in common, with the right to sue for partition (but for purposes of such partition the Total Property shall be deemed not susceptible of division), all subject to the written approval of the holders of the First Mortgages and the Owner of the Commercial Parcel.

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

#### ARTICLE XI

##### Liens, Debts, Interest and Remedies

11.1 If at any time, any Owner fails within the time period set forth for payment, or if no time period is set forth, then within ten (10) days after notice or demand to such Owner to pay to any other Owner any sum of money due any other Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies each Creditor Owner may have, such Creditor Owner shall have a lien against the Defaulting Owner's interest in the Total Property and a lien against any insurance proceeds payable to Defaulting Owner to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article XI. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section 11.1(i) shall be subject and subordinate to the lien of any mortgage, trust deed or other encumbrance on the Defaulting Owner's interest in the Total Property at the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said mortgage, trust deed or other encumbrance, and (ii) are subject to termination and defeat as provided in Section 11.4 below.





11.2 To the fullest extent permitted by law, the provisions of Article X of this Declaration shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligation of the Unit Owners to repair or restore the Condominium Property or (ii) the use of insurance proceeds for repair and restoration of the Condominium Property. In the event of fire or other casualty or act of God or disaster causing damage to the Condominium Property which would entitle the Owner of the Residential Property, under the Act, to withdraw all or any part of the Condominium Property from the Act and not to repair and restore the Condominium Property as required by this Declaration, notwithstanding the foregoing sentence, then the Owner of the Commercial Building and the Owner of the Hotel Property shall have a lien on the Condominium Property and any insurance proceeds payable for loss or damage to such portion of the Building under insurance policies carried pursuant to Article IX hereof, in an amount necessary so that the Owner of the Commercial Building and the Owner of the Hotel Property shall have sufficient proceeds to demolish or repair and restore the Building to a condition so as adequately to assure:

(a) the structural integrity and safety of the Building;

(b) the continuous and efficient operation of all Building electrical, utility, mechanical, plumbing and other systems serving the Commercial Building and the Hotel Building;

(c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction over the Total Property; and

(d) the architectural unity and aesthetic appearance of the restored Building as first-class property.

The lien created by this Section 11.2 shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on the Condominium Property or any portion thereof. Such lien shall arise immediately upon the recording of a notice by the Owner of the Commercial Building or the Owner of the Hotel Property with the Recorder following the occurrence of a fire or other casualty or act of God or disaster stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the Owner of the Commercial Building and the Owner of the Hotel Property, or the Owner of the Residential Property shall have repaired and restored the Condominium Property as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such



lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

11.3 Subject to the limitations set forth in Article XV hereof, and without limiting any equitable remedies to which the Owner of the Commercial Property or the Owner of the Hotel Property may be entitled, so long as the Residential Property remains subject to the provisions of the Act, no Unit Owner shall be personally liable for all or any part of any claim against the Owner of the Residential Property in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit Ownership as set forth in the Condominium Declaration. Upon payment of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

11.4 No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this Article XI other than a divestiture resulting from a foreclosure of a mortgage lien that is superior to the lien arising pursuant to this Article XI and other than a divestiture of the Owner of the Commercial Building's title to the Commercial Building resulting from the expiration or sooner termination of the Ground Lease, which foreclosure or expiration or termination of the Ground Lease shall automatically cut-off, terminate and defeat any such lien.

11.5 The holder of a mortgage or trust deed on all or any portion of the Commercial Property, the Hotel Property or the Residential Property shall have the right to an assignment of any lien affecting the property secured by its mortgage or trust deed, and the Owner of the Commercial Parcel shall have the right to an assignment of any lien affecting the Commercial Building, upon payment of the amount secured by such lien and shall in the event of said payment or satisfaction be subrogated to such other lien and any additional security held by the holder thereof. Such holder of a mortgage or trust deed or the Owner of the Commercial Parcel may at any time give to the holder of the lien a written notice of its election to pay such amount. On a date not less





than ten (10) and not more than thirty (30) days after such notice of election, the holder of a mortgage or trust deed or the Owner of the Commercial Parcel shall pay the full amount of such lien, and the holder of the lien shall deliver to the holder of a mortgage or trust deed or the Owner of the Commercial Parcel an instrument in recordable form assigning the lien together with the debt secured thereby.

11.6 Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate per annum equal to the lesser of: (a) the floating rate which is equal to four percent (4%) in excess of the rate of interest from time to time announced by The First National Bank of Chicago at Chicago, Illinois, as its prime rate, reference rate or corporate base rate, or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a prime rate, reference rate or corporate base rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

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

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

11.9 Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, any holder of a First Mortgage is diligently proceeding to foreclose the First Mortgage, then such period in which an action by the Owner of the portion of the Total Property encumbered by such First Mortgage must be commenced shall



be further extended for such additional time as may reasonably be necessary in order for the holder of such First Mortgage to obtain possession of such portion of the Total Property.

11.10 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration.

## ARTICLE XII

### Arbitration

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

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$200,000 (in 1988 equivalent dollars) which shall not be resolved within sixty (60) days after same have arisen; and

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

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

12.2 Unless otherwise agreed to in writing by the parties to the arbitration, within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate one arbitrator to resolve the Matter. If the parties fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in

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be further expended for such additional... necessary in order for the holder of... possession of such portion of the total...

12.10 A Refunding Commission shall... fees and court costs paid or incurred... successfully enforcing the rights granted... under this Declaration.

## ARTICLE XII

### Arbitration

12.1 The following matters shall be referred... to the American Arbitration Association... subject to the provisions of the AAJ...

(A) All disputes, claims or controversies... Declaration involving an amount not... equivalent dollars) which shall not... days after same have arisen and...

(B) All other matters not otherwise... provisions of this Declaration shall be... by arbitration.

Any such dispute, claim, controversy, claim... herein as a "matter" shall be referred... initiated by any person named in the... written notice thereof to the... such demand with the AAJ. The... the giving of such notice and the... arbitration shall be held in... conducted and completed in... delay. The Order of the... any arbitration of a matter... consent or approval of the... persons. The holder of the... any arbitration of a matter... consent or approval of the... person.

12.2 Unless otherwise agreed to... the arbitration, within twenty... demanding arbitration has been... designate one arbitrator to... fail to designate the arbitrator... arbitrator shall be appointed... set forth in the applicable AAJ...

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any event such arbitrator shall be experienced as to the design, construction and/or operation, as the Matter requires, of high-rise, multi-use structures similar to the Building. Except where contrary to the provisions set forth in this Declaration, the rules of the AAA for commercial arbitration shall apply to the arbitration of any Matter. During the twenty (20) day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

12.3 The arbitrator shall commence hearings within sixty (60) days of selection, unless the Owners or the arbitrator agree upon an expedited or delayed schedule of hearings. Prior to the hearings any Owner may send out requests to compel document production from the other Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrator in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Declaration. Subject to the other terms hereof, if any Owner (or, where applicable, the Owner of the Commercial Parcel) fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitration panel may hear and determine the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner (and, where applicable, by the Owner of the Commercial Parcel), except that each Owner (and the Owner of the Commercial Parcel) shall be responsible for its own expenses.

12.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article XII. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any party to the Matter by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any matter is resolved as provided in this Article XII.



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12.5 With respect to any Matter subject to arbitration under this Article XII, it is agreed that the arbitration provisions of this Article XII shall be the sole remedy of the Owners (and the Owner of the Commercial Parcel) under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article XII or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article XII may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the Owners, the Owner of the Commercial Parcel and the holders of the First Mortgages and judgment thereon shall be entered by any court having jurisdiction.

12.6 For purposes of this Article XII, "1988 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 1988. The 1988 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination and (y) the Consumer Price Index for December, 1988, and the denominator of which is the Consumer Price Index for December, 1988. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago, All Items (Base Year 1967 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

## ARTICLE XIII

### Unavoidable Delays

The Owners shall diligently perform their respective obligations set forth herein. No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by fire or other

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13.5 With respect to any matter arising under this Article XII, it is agreed that the arbitration panel shall be the sole remedy of the Owner of the Commercial Parcel (hereinafter "Owner") for the determination of any other provisions of this agreement to arbitrate under prevailing arbitration law. The arbitration panel shall not consider any matter not specifically mentioned in the arbitration of any dispute arising under this Article XII or any other provisions described herein, provided that the arbitration panel shall be limited to the determination of any party, as defined in the arbitration proceedings involving additional parties, subject of such other proceedings. Any matter not included in the arbitration shall be final and binding upon the Owner of the Commercial Parcel and the Owner of the adjacent parcel. Judgment thereon shall be entered by the arbitration jurisdiction.

13.6 For purposes of this Article XII, "dollars" means the equivalent value of one dollar (\$1.00) in United States currency or any other equivalent amount by which the difference between the index (as determined by the Bureau of Economic Analysis and the Commerce Department, December 1982, and the Commerce Department, December 1983, and the Bureau of Economic Analysis and the Commerce Department, City of Chicago, for the applicable month) and the applicable month of the United States Department of Commerce, Bureau of Economic Analysis, index agreed to by the Owner of such parcel shall be available.

## ARTICLE XIII

### Unavailability of Dollars

The Owners shall discontinue their obligations set forth herein. No amount shall be payable in default in the performance of any obligation of the Owners pursuant to this declaration, other than an obligation to pay the payment of a sum of money, if such sum is not available to the payment of such obligation shall be directly caused by the unavailability of dollars.

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casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense pre-emptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Owner unable to perform (the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within ten (10) days after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any of the other Owners or the Owner of the Commercial Parcel, keep the other Owners and the Owner of the Commercial Parcel fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

#### ARTICLE XIV

##### Condemnation

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

14.2 All Awards resulting from the taking of all or any part of the Total Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository and disbursed by the Depository as hereinafter provided. In the event of a taking or a temporary use of any space not including Residential, Hotel or Commercial Easement Facilities or affecting services described in Sections 6.1, 6.2 or 6.3 hereof, each of the Owner of the Commercial Property, the Owner of the Hotel Property and the Owner of the Residential Property shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property according to the law then applicable.

14.3 In the event of a taking (other than a temporary taking) of a part of the Commercial Property only, the Hotel Property only, the Residential Property only or any two such portions of the Total Property only (not including any Easement Facilities of any other portion of the Total Property or affecting services

