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RIVER PLAZA  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

DATED AS OF AUGUST 11<sup>th</sup>, 1994

BY

LASALLE NATIONAL TRUST, N.A.,  
AS TRUSTEE UNDER TRUST AGREEMENT  
DATED AUGUST 1, 1994 AND KNOWN  
AS TRUST NO. 113678

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

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This instrument was prepared by:

Michael S. Kurtzon  
Miller, Shakman, Hamilton, Kurtzon  
& Schlifke  
208 South LaSalle Street  
Suite 1100  
Chicago, Illinois 60604

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## RIVER PLAZA DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

**THIS DECLARATION** is made and entered into as of the \_\_\_\_\_ day of August, 1994, by LaSalle National Trust, N.A., not personally, but solely as Trustee under Trust Agreement dated August 1, 1994 and known as Trust Number 118678 ("Declarant").

### RECITALS:

- A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 1 hereof.
- B. Declarant is the owner of the Total Parcel situated in Chicago, Cook County, Illinois and legally described in Exhibit "A".
- C. The Total Parcel is presently improved with a fifty-four (54) story multi-use building and a plaza deck together with a four (4) level below-grade parking garage.
- D. By virtue of the Subdivision Plat, the Total Parcel has been divided into separate Lots. All Lots are hereafter referred to by their Lot number as designated in the Subdivision Plat.
- E. Subsequent to the conveyance of the Commercial Property to the Owner of the Commercial Property, and the conveyance of the Garage Property to the Owner of the Garage Property, neither the Residential Property, Commercial Property, nor the Garage Property will be functionally independent of the others and each will depend upon the others, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Residential Property, Commercial Property and Garage Property.
- F. The Owner of the Residential Property intends to submit the Residential Property to the Act. The Owner of the Garage Property may in the future submit the Garage Property to the Act and the Owner of the Commercial Property may in the future submit the Commercial Property to the Act.
- G. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Residential Property which will be binding upon each

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present and future Owner of the Residential Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Commercial Property and the Garage Property, or of any portion thereof or interest or estate therein, to the extent provided herein, (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Residential Property and the Garage Property, or of any portion thereof or interest or estate therein, including any Unit in the Residential Property, and (iii) certain easements, covenants and restrictions against and affecting the Garage Property, which will be binding upon each present and future Owner of the Garage Property, or of any portion thereof or interest therein, and which will inure to the benefit of each of the present and future Owners of the Residential Property and the Commercial Property, or of any portion thereof or interest or estate therein including any Unit in the Residential Property, Commercial Property or Garage Property to the extent provided herein.

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

## ARTICLE 1

### INCORPORATION OF RECITALS

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

## ARTICLE 2

### DEFINITIONS

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

2.2 "Air Rights Agreement" means Land Reservation Agreement dated September 1, 1975 and recorded with the Cook County Recorder of Deeds as Document No.

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23217944, as amended by Amendment to Land Reservation Agreement dated November 5, 1975 and recorded as Document No. 23325130 and Second Amendment to Land Reservation Agreement dated December 3, 1986 and recorded as Document No. 86593570.

2.3 "Architect" shall have the meaning set forth in Article 16 hereof.

2.4 "Atrium" shall mean the portion of the Commercial Property designated as Lot 23 on the Subdivision Plat.

2.5 "Building" means all improvements, including but not limited to the building, Facilities, sidewalks, Truck Ramp Facility, walkways, Plaza Deck, driveways and landscaping located in, on, under or about the Total Parcel.

2.6 "Commercial Improvements" means all improvements constructed within and upon the Commercial Parcel. In the event of any reconstruction of the Commercial Improvements pursuant to Article 11 or Article 15, the Commercial Improvements shall include any such improvements reconstructed on the Commercial Parcel.

2.7 "Commercial Parcel" means that portion of the Total Parcel legally described on Exhibit "B" attached hereto.

2.8 "Commercial Property" means the Commercial Parcel improved with the Commercial Improvements.

2.9 "Commercial Property Common Facilities" means all Facilities, equipment and areas within the Commercial Property intended generally for the common use of the tenants or occupants of the Commercial Property.

2.10 "Common Elements" means all portions of the Total Property submitted from time to time to the Act pursuant to the Condominium Declaration except the Units.

2.11 "Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings situated on or adjoining two Lots, or located on one Lot but forming the walls, floors or ceilings of an adjoining Lot.

2.12 "Condominium Association" means an Illinois not-for-profit corporation to be formed for the purpose of administering the Condominium Property pursuant to Act.

2.13 "Condominium Declaration" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any portion of the Total Property to the provisions of the Act.

2.14 "Condominium Improvements" means the Residential Improvements after submission to the Act.

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2.15 "Condominium Property" means any portion of the Total Property, whether the Residential Property, Garage Property or Commercial Property from and after its submission to the Act and so long as it has not been withdrawn from the Act.

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

2.17 "Declarant" means LaSalle National Trust, N.A., as Trustee under Trust Agreement dated August 1, 1994 and known as Trust Number 118678, its successors and assigns and any other person or entity designated by a Declarant to be the Declarant.

2.18 "Declaration" means this River Plaza Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements thereto.

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

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

2.21 "Depository" means the person or entity from time to time acting pursuant to Article 17 of this Declaration.

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

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

2.24 "Facilities" means all components of the chilled and heating hot water, condenser water, central air handling and fan, temperature control, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, master antenna, emergency power, telephone, elevator, loading dock, trash removal and other utility systems forming a part of the Building and designed or utilized to furnish utility and other services to any portion of the Building, including but not limited to: annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compactors, compressors,

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computers, conduits, controls, control centers, cooling towers, couplers, dampers, devices, ducts, elevator cars, elevator rails, equipment, fans, fixtures, generators, grease traps, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

2.25 "Garage" means the four (4) level parking structure constructed upon and within the Garage Parcel including the Plaza Deck, the two elevators and elevator shafts located therein, internal stairways providing pedestrian access to the Commercial Property or Residential Property and entrance and exit ramps leading to the Plaza Deck.

2.26 "Garage Elevators" means the two (2) elevators located in the Garage Property.

2.27 "Garage Improvements" means all improvements constructed within and upon the Garage Parcel. In the event of any reconstruction of the Garage Improvements pursuant to Article 11 or Article 15, the Garage Improvements shall include any improvements reconstructed on the Garage Parcel.

2.28 "Garage Parcel" means that portion of the Total Parcel legally described on Exhibit "C" attached hereto.

2.29 "Garage Property" means the Garage Parcel and the Garage Improvements.

2.30 "Improvements" means the Condominium Improvements, Residential Improvements, Garage Improvements and Commercial Improvements.

2.31 "Lot" means a Lot designated on the Subdivision Plat.

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

2.33 "Mortgage" means a first mortgage or first trust deed in the nature of a mortgage on the Garage Property or the Commercial Property, but shall not include a mortgage or trust deed on a Unit in the Commercial Property or Garage Property if either the Commercial Property or the Garage Property is submitted to the Act.

2.34 "Mortgagee" means the holder of a Mortgage.

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2.35 "Non-Residential Property" means the Commercial Property and the Garage Property.

2.36 "Owner" means either the Owner of the Residential Property, the Owner of the Commercial Property or the Owner of the Garage Property, as the context requires. "Owners" means the Owner of the Residential Property, the Owner of the Garage Property and the Owner of the Commercial Property, or any two of them as the context may require.

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

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

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

2.40 "Plans" means those architectural and engineering drawings and specifications used for the original construction of the Building which are identified in Exhibit "F" attached hereto. The Plans are not "as-built" plans. Therefore, the Plans do not necessarily reflect the exact dimensions or location of each component in or about the Building.

2.41 "Plaza Deck" means the deck located on top of the Garage and adjacent areas and forming part of Lot No. 12 of the Garage Property and Lot No. 27 of the Commercial Parcel, including all driveways and walkways forming a part thereof, as shown on the plan attached as Exhibit "E" hereto.

2.42 "Pool Deck" means the portion of the Residential Property located on the Pool Deck Level of the Building as shown on Page A-15 of the Plans and constituting Lot No. 45 on the Subdivision Plat which contains the swimming pool and swimming pool deck.

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2.43 "Pool Equipment Area" means the portion of Lot No. 30 in the Commercial Property on the Lower Pool Level of the Building (as shown on Page A-14 of the Plans) which contains mechanical equipment serving the swimming pool located in Lot No. 46 in the Residential Property.

2.44 "Recorder" means the Recorder of Deeds of Cook County, Illinois.

2.45 "Residential Improvements" means all improvement constructed upon and within the Residential Parcel until submitted by the Act. The Residential Improvements shall also mean any improvements on the Residential Parcel which may be reconstructed on the Residential Parcel pursuant to Article 11 or Article 15 of this Declaration.

2.46 "Residential Parcel" means that portion of the Total Parcel legally described on Exhibit "D" attached hereto.

2.47 "Residential Property" means the Residential Parcel and the Residential Improvements.

2.48 "Subdivision Plat" means the Plat of Resubdivision for River Plaza Resubdivision.

2.49 "Total Parcel" means the parcel of real estate legally described on Exhibit "A" attached hereto.

2.50 "Total Property" means the Residential Property, the Condominium Property, the Commercial Property and the Garage Property.

2.51 "Truck Ramp Facility" means the portion of the Garage Property constituting Lot No. 1 located at the South end thereof except for any part thereof forming the pavement of the Plaza Deck.

2.52 "Unavoidable Delay" means those events described in Article 12 hereof which excuse the timely performance of any obligation created hereunder.

2.53 "Unit" means any portion of the Total Property submitted to the Act described as a "Unit" in a Condominium Declaration.

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

2.55 "Unit Ownership" means a part of any portion of the Total Property submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

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## ARTICLE 3

### EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

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

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

(b) A non-exclusive Easement for the use for their intended purposes of all Facilities located in the Commercial Property and Garage Property and connected to Facilities located in the Residential Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Residential Property, the Commercial Property or the Garage Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Residential Property, Garage Property or Commercial Property including, without limitation, elevator buttons, indicators and related elevator equipment.

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

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

(e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Commercial Property and Garage Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement,

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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 3.1 or to provide structural support required by Article 7 hereof or to assist in providing the services required under Article 6 hereof.

(f) A non-exclusive Easement for pedestrian ingress and egress to, from and across, on and over the interior stairwells adjacent to the Garage Elevators located within the Garage Property and connecting the Garage with certain areas in the Residential Property and (2) all stairways located within the Commercial Property that provide access, ingress and egress to and from the Residential Property through the Commercial Property.

(g) A non-exclusive Easement for ingress and egress by elevator to and from the Garage Property and for the use of the Garage Elevators and Garage Elevator lobbies and corridors by persons who park vehicles in the Garage.

(h) A non-exclusive Easement to use the freight elevator located in Lot No. 4 of the Commercial Property.

(i) A non-exclusive Easement for (1) the use of the elevator shafts and rails attached thereto located in or passing through the Commercial Property, which elevator shafts and rails house and guide those six (6) elevators which are owned by the Owner of the Residential Property and connect the Residential Improvements with the first floor of the Building and also with all levels of the Garage, and (2) pedestrian ingress and egress over, upon and through the Atrium, and through the Commercial Property Common Facilities for access, ingress and egress to and from the health club and Pool Deck, and on and across any walkways or driveways located in or adjacent to the Building, to the extent reasonably necessary for access to and from the Plaza Deck and/or public roadways.

(j) A non-exclusive Easement for ingress, egress and access to, and the use of, any service areas and delivery entrances located in, on or about the Commercial Property or the Garage Property for shipping and delivery and similar purposes.

(k) A non-exclusive Easement for ingress, egress and access to and over the Truck Ramp Facility for access from the entrance thereto adjacent to the Plaza Deck to North Water Street.

(l) A non-exclusive Easement for access, ingress and egress to and from the emergency generator, fuel tank and associated Facilities located in Lot No. 1 in the Garage Property on Sub-Level 2 (shown on Page A-11 of the Plans) and the catch basins located in the Garage Property on Sub-Level 3 (shown on Page A-10 of the Plans) permitting the use and Maintenance thereof.

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(m) A non-exclusive Easement through and across the first floor of the Garage for pedestrian ingress, egress and access to and from Lot No. 10.

(n) A non-exclusive Easement for the Maintenance of any rubbish chutes serving the Residential Property to the extent such rubbish chutes pass through the Commercial Property.

(o) Non-exclusive Easements for pedestrian ingress and egress over, across and upon the common hallways and other Common Areas of the Commercial Property to the extent reasonably necessary to (1) provide access to the commercial facilities located within and upon the Commercial Property and (2) provide access, ingress and egress to and from the mechanical room in Lot No. 34, the health club in Lot No. 41 and any other areas of the Residential Property located on the Mezzanine 2 Level of the Building (as shown on Page A-14 of the Plans).

(p) A non-exclusive Easement through the Garage for access to and Maintenance of the equipment serving the fountain located on the area adjacent to the Plaza Deck.

(q) A non-exclusive Easement over and across the public areas of the Commercial Property for access, ingress and egress to and from the lobby area of the Residential Property; provided, however, that no dogs or other pets shall be walked through any such areas.

(r) A non-exclusive Easement for the use and Maintenance of all smoke towers passing through the Commercial Property and/or Garage Property.

(s) A non-exclusive Easement for pedestrian and vehicular access, ingress and egress to, from, over and across the Plaza Deck to Wabash Avenue and for pedestrian access, ingress and egress to, from, over and across the Plaza Deck for access to the bridge walkway connecting to Plaza Deck and extending across Rush Street.

(t) A non-exclusive Easement for access, ingress and egress to and from planters located on the Plaza Deck to permit the Maintenance thereof.

(u) A non-exclusive Easement, through and over the Lower Pool Level of the Commercial Property (as shown on Page A-14 of the Plans) for ingress, egress and access to, from and through the Pool Equipment Area located in Lot No. 30 and for the Maintenance of the swimming pool equipment located in the Pool Equipment Area.

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(v) A non-exclusive Easement through and across Lot No. 1 in the Garage Property for access to and Maintenance of storm water drain lines and ejector pumps located in or passing through the Garage Property.

(w) A non-exclusive Easement for: the use and Maintenance of the portion of the swimming pool extending into Lot No. 30 in the Lower Pool Level of the Commercial Property as shown on Page A-14 of the Plans.

(x) A non-exclusive Easement over and across the bridge connecting the Mezzanine 2 Level of the Commercial Property (as shown on Page A-15 of the Plans) to Lot No. 46, containing the swimming pool, for pedestrian access, ingress and egress to and from Lot No. 46.

(y) A non-exclusive Easement through and across Lot No. 1 of the Garage Property for access to and Maintenance of the kitchen waste risers located in or passing through the Garage Property and grease traps and pumps located on the Garage Sub-Levels 3 and 4 of the Garage Property shown on Pages A-9 and A-10 the Plans.

(z) A non-exclusive Easement through and across the first floor of Lot No. 1 of the Garage Property for access, ingress and egress to and from the bicycle storage areas located in the Residential Property.

(aa) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Residential Property and (ii) for the use of such Common Walls, Floors and Ceilings.

3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property or the Garage Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the applicable Owner of the Commercial Property or Owner of the Garage Property affected by such Easement 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 applicable portion of the Commercial Property or Garage Property and in order to assure the reasonable security of the applicable portion of the Commercial Property or Garage Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and provided further that Section 3.1(d) shall not be subject to any such limitation.

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3.3 Easements provided for, declared or created under this Article 3 shall be binding upon the Commercial Property and Garage Property and each Owner of the Commercial Property and Owner of the Garage Property and shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property and each portion thereof.

3.4 In the event of the submission of the Residential Property to the Act, then all of the Easements granted under Section 3.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

3.5 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the non-performing grantee or its agents.

## ARTICLE 4

### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

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

(a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Residential Property and Garage Property for the support of (i) the Commercial Improvements and (ii) any Facilities located in the Residential Property and Garage 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 Residential Property and Garage Property and connected to Facilities located in the Commercial Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any





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utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property, including, without limitation, (1) electrical connections and wiring serving the lighting fixtures located in the Atrium and attached to the Residential Property, (2) plumbing fixtures serving the laundry room located in Lot 7, and (3) elevator buttons, indicators and related elevator equipment, and (ii) permitting the exercise of the rights granted to the Owner of the Commercial Property pursuant to Section 6.6 hereof during any period in which said rights may be exercised.

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

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

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

(f) A non-exclusive Easement for the use of the trash compactor, rubbish storage, rubbish room and rubbish chutes located in Lot No. 3 of the Residential Property.

(g) A non-exclusive Easement for the use of the six (6) elevators and elevator shafts located within Lot No. 5 of the Residential Property which connect the Residential Improvements to the first floor of the Building (i) to provide access, ingress and egress to and from the Commercial Property and (ii) to permit the exercise of the rights granted to the Owner of the Commercial Property pursuant to Section 6.6 hereof during any period in which said rights may be exercised.

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(h) A non-exclusive Easement for pedestrian ingress and egress over, upon and through any hallways, stairways, walkways or driveways located within or adjacent to the Building, to the extent reasonably necessary for access to and from public roadways.

(i) A non-exclusive Easement for ingress, egress and access to, and the use of, any loading docks, service areas and delivery entrances located in, on, or about the Residential Property for shipping and delivery and similar purposes.

(j) A non-exclusive Easement for pedestrian and vehicular ingress and egress from and to the public roadways over, across, on and through the Garage Property or Residential Property as may be necessary in connection with the use of parking spaces in the Garage.

(k) A non-exclusive Easement for ingress, egress and access to and over the Truck Ramp Facility located in Lot No. 1 for access from the entrance thereto adjacent to the Plaza Deck to North Water Street.

(l) A non-exclusive Easement for pedestrian and vehicular ingress and egress from and to public roadways over, on, across and through the driveways, sidewalks, ramps, curbs and roadways contained in and about the Residential Property and Garage Property, including, without limitation the Plaza Deck, as may be necessary for the use and Maintenance of the Commercial Improvements.

(m) An Easement for the use of that portion of the Plaza Deck delineated as the "Patio Area" on Exhibit "E" attached hereto.

(n) An Easement for access, ingress and egress through the area of the Garage Property located in Lot No. 1 on the Garage and Building Services Sub-Level 1 portion of the Building (as shown on Page A-12 of the Plans) to and from, and the use for storage and other purposes of Lot No. 11 as delineated on Exhibit "G" attached hereto.

(o) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Commercial Property and (ii) for the use of such Common Walls, Floors and Ceilings.

(p) A non-exclusive Easement for access, ingress and egress, and delivery of supplies to and from, and use of, the area of the Garage forming Lot No. 6.

(q) A non-exclusive Easement for pedestrian and vehicular access, ingress and egress to, from, over and across the Plaza Deck to Wabash Avenue and for

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pedestrian access, ingress and egress to, from, over and across the Plaza Deck for access to the bridge walkway connecting to the Plaza Deck and extending across Rush Street.

(r) A non-exclusive Easement for pedestrian access, ingress and egress to and from Lot No. 10 through and across the first floor of the Garage.

(s) A non-exclusive Easement for the use of the elevator shaft and rails thereto located in or passing through the Residential Property for the freight elevator located in Lot No. 4 and for access, ingress and egress to and from and permitting the use and Maintenance of such freight elevator and the elevator maintenance room located in Lot No. 4 and for access, ingress and egress through and across the elevator lobbies adjacent to the freight elevator and the common corridors of the Residential Property adjacent thereto.

(t) A non-exclusive Easement for access, ingress and egress through and across the first floor of the Garage Property permitting the use and Maintenance of the grease traps located therein.

(u) A non-exclusive Easement on, to and over, the Plaza Deck and the Residential Property to permit Maintenance of the Atrium.

(v) An Easement for the use of the exhaust shafts and ducts and related ventilation equipment serving Lots 25, 26 and 29 of the Commercial Property and located in or passing through Lots 46 and 48 of the Residential Property permitting exhaust ventilation to the Pool Deck.

(w) A non-exclusive Easement for pedestrian access, ingress and egress to and from Lot No. 7 (Laundry Room) located on the Garage Building Services Sub-Level 1 as shown on Page A-12 of the Plans through and across the Residential Property to Lot No. 27 and to the exterior walkway on the east side of the Building.

(x) An Easement permitting encroachments on and over the Plaza Deck for the construction and Maintenance of the entrance canopies, canopy support columns, exterior lighting fixtures, stoops, stairways, doorways and related facilities attached to or forming part of the Commercial Property or the Improvements thereon.

4.2 Each Easement created under this Article 4 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property and Garage Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the applicable Owner of the Residential Property and Owner of the Garage Property affected by such Easement may, from time to time after consultation with the Owner of the Commercial 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

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Easements may be used to prevent any unreasonable interference with the use and operation of the Residential Property or Garage Property and in order to assure the reasonable security of the Residential Property or Garage Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that Section 4.1(d) shall not be subject to any such limitation.

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

4.4 In the event of the submission of the Commercial Property to the Act, then all of the Easements granted under Section 3.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

4.5 Declarant hereby reserves and grants to the Owner of the Commercial Property the right to construct and maintain on Lot No. 27 an extension of and addition to the Improvements on the Commercial Property.

4.6 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the non-performing grantee or its agents.

## ARTICLE 5

### EASEMENTS IN FAVOR OF GARAGE PROPERTY AND GENERAL EASEMENT PROVISIONS

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

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

(b) A non-exclusive Easement for the use for their intended purposes of all Facilities located in the Residential Property and Commercial Property and connected to Facilities located in the Garage Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Garage Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Garage Property, including, without limitation, the sanitary and storm sewer lines as may be located therein and elevator buttons, indicators and related elevator equipment.

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

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

(e) A non-exclusive Easement to be used only in common with the Owner of the Residential Property and Owner of the Commercial Property, for ingress and egress (and where reasonably necessary, use) for persons, materials and equipment over, on, across and through the Residential Property and Commercial Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Garage Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 5.1 or to provide structural support required by Article 7 hereof or to assist in providing the services required under Article 6 hereof.

(f) A non-exclusive Easement for access, ingress and egress through the Residential Property to and across Lot No. 3 for the use of the electrical power panel located therein.

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(g) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Garage Property and (ii) for the use of such Common Walls, Floors and Ceilings.

5.2 Each Easement created under this Article 5 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property or Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the applicable Owner of the Residential Property or Owner of the Commercial Property affected by such Easement may, from time to time after consultation with the Owner of the Garage 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 Residential Property or Commercial Property and in order to assure the reasonable security of the Residential Property or Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that Section 5.1(d) shall not be subject to any such limitation.

5.3 Easements provided for, declared or created under this Article 5 shall be binding upon the Residential Property and Commercial Property and the Owner of the Residential Property and Owner of the Commercial Property and shall run in favor of and inure to the benefit of and be appurtenant to the Garage Property.

5.4 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3, 4 and 5 hereof, the Owner of that portion of the Total Property burdened by such Easement shall have the right, after consultation with the Owner benefited by such Easements, to relocate any such Easements in the event comparable alternative means can be substituted to insure the continuation of the benefit granted.

5.5 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3, 4 and 5 hereof for pedestrian ingress and egress in an Emergency Situation, such Easements shall not be deemed to include (a) any portion of a dwelling unit, (b) the interior of any portions of the Total Property intended to be leased to tenants, or (c) the interior of any portion of the Total Property used for office purposes.

5.6 In the event of the submission of the Garage Property to the Act then all of the Easements granted under Section 3.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

5.7 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of any such Easement in such a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to

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the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement, and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the non-performing grantee or its agents.

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

## ARTICLE 6

### SERVICES TO OWNER OF CONDOMINIUM PROPERTY, RESIDENTIAL PROPERTY, COMMERCIAL PROPERTY AND GARAGE PROPERTY

6.1 The Owner of the Residential Property shall furnish the following services to the Owner of the Commercial Property and Owner of the Garage Property, to the extent required:

(a) Roof, Storm Drains, Parapets. Maintenance of all of the roofs of the Building, the storm drains and parapets, cooling tower and cooling tower enclosure in a manner consistent with the operation of a first-class, mixed-use, building upon the terms and conditions set forth in Exhibit 6.1(a);

(b) Trash Removal. Scavenger service from the service area located on the first floor of the Building and Maintenance of the rubbish chutes, compactors, compactor room, service area and loading docks and related Facilities including roadways, ramps, doors and other means of access in a manner consistent with the operation of a first-class, mixed-use building upon the terms and conditions set forth in Exhibit 6.1(b);

(c) Plaza Deck, Adjacent Area and Street Level. Maintenance of (i) the pavement and surfaces of the Plaza Deck and area adjacent thereto located on property owned by the City of Chicago including curbs, driveways and railings and the landscaping thereon, landscaping in planters and the fountains located thereon, (ii) the street level pavement adjacent to the Building, (iii) removal of snow from sidewalks, stairways and driveways on the Plaza Deck and on all other sidewalk and driveways leading to all street level entrances to the Building, and (iv) keeping such sidewalks, driveways and street level entrances to the Building free from debris and obstructions to pedestrian and vehicular traffic, as applicable upon the terms and conditions set forth in Exhibit 6.1(c);

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- (d) Facade Maintenance. Maintenance of the facade of the Building, including the exterior of the Atrium, in good repair upon the terms and conditions set forth in Exhibit 6.1(d);
- (e) Security. Provide security at the entrance to the lobby of the Building and at the loading dock in a manner consistent with the standards of a first-class, mixed-used building upon the terms and conditions set forth in Exhibit 6.1(e);
- (f) Elevators. Maintenance of the six (6) Residential Elevators and all shafts, equipment and other components related thereto, in a manner consistent with the standards of a first-class, mixed-use building upon the terms and conditions set forth in Exhibit 6.1(f);
- (g) Window Cleaning. Washing and cleaning of all exterior windows and glass surfaces of the Building in a manner consistent with the standards of a first-class, mixed-use building upon the terms and conditions set forth in Exhibit 6.1(g);
- (h) Heating System. Through the heating system, supply the heating requirements of the Commercial Property and Garage Property and Maintenance of the heating system upon the terms and conditions set forth in Exhibit 6.1(h);
- (i) Chilled Water System. Through the chilled water system, supply the chilled water requirements of the Commercial Property and Maintenance of the chilled water system upon the terms and conditions set forth in Exhibit 6.1 (i);
- (j) City Water Supply System. Hot and cold city water required by the Owner of the Commercial Property and Owner of the Garage Property from city mains through the water supply systems located in the Building and Maintenance of all water lines entering the Building from city mains and water supply system upon the terms and conditions and as more particularly described in Exhibit 6.1(j);
- (k) Sanitary Waste System. Maintenance of all drain lines and risers serving the Building in a manner consistent with the operation of a first-class, mixed-use building upon the terms and conditions set forth in Exhibit 6.1(k);
- (l) Emergency Power. Emergency electrical service and Maintenance of emergency electrical Facilities upon the terms and conditions set forth in Exhibit 6.1(l);
- (m) Electrical Supply System. Electrical requirements (but not the cost of electricity itself) for use in the Garage Property and Commercial Property and Maintenance of the electrical equipment and distribution equipment upon the terms and conditions set forth in Exhibit 6.1(m);

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(n) Fire Suppression System. Maintenance of the fire alarm and security surveillance equipment and fire suppression equipment upon terms and conditions set forth in Exhibit 6.1(n);

(o) Exterior Lighting. Maintenance of exterior lighting on the terms and conditions set forth in Exhibit 6.1(o);

(p) Telephone System. Maintenance of the telephone distribution system servicing the Building; and

(q) Commercial Common Area Maintenance. Cleaning and Maintenance of the Commercial Property Common Areas, the cost of which shall be paid by the Owner of the Commercial Property pursuant to Exhibit 6.5.

6.2 The Owner of the Garage Property shall furnish the following services to the Owner of the Residential Property and Owner of the Commercial Property to the extent required:

(a) Elevator Service. Maintenance of the two (2) Garage Elevators and all shafts, equipment and other components related thereto, in a manner consistent with the standards of a first-class mixed-use building upon the terms and conditions set forth in Exhibit 6.1(f);

(b) Truck Ramp Facility. Maintenance of the Truck Ramp Facility pursuant to Exhibit 6.1(c); and

(c) Plaza Deck. Maintenance of all structural portions of the Plaza Deck, the planters located on the Plaza Deck and all other portions of the Plaza Deck other than those required to be maintained, repaired or replaced by the Owner of the Residential Property, at the sole expense of the Owner of the Garage Property pursuant to Exhibit 6.1(c). No Unit Owner shall be permitted to walk a dog on the Plaza Deck.

6.3 The Owner of the Commercial Property shall furnish the Owner of the Residential Property with elevator service through the freight elevator located in Lot 4 of the Commercial Property and Maintenance of such freight elevator upon the terms and conditions set forth in Exhibit 6.1(f). The Owner of the Commercial Property, so long as such Owner owns Lot 7, and all subsequent owners, from time to time of Lot 7, shall operate, or cause to be operated a coin operated laundry facility in Lot 7 for the use of the residents of the Residential Property. Such laundry facility shall be operated on a basis comparable to the basis on which operated on the date of this Declaration and the rates charged for the use of washers and dryers shall be comparable to the rates charged for the use of such equipment in laundry facilities in other high-rise condominium buildings in the Chicago metropolitan area.

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6.4 Each Owner shall make a good-faith effort to operate its Facilities and cooperate to secure and furnish all services, (a) at the lowest possible costs reasonably available without degrading the quality of any services furnished and (b) in a manner so as to provide the Owner of the Residential Property, Owner of the Commercial Property and Owner of the Garage Property with comfortable occupancy and enjoyment of the Residential Property, Commercial Property and Garage Property for their respective intended uses.

6.5 Statements for services rendered pursuant to Article 6 hereof, provisions for payment thereof and provisions for additional payments incurred in connection with such services shall be made in accordance with the terms and provisions of Exhibit 6.5 attached hereto and made a part hereof.

6.6 If any Owner shall fail to perform as required by the terms and conditions of Sections 6.1, 6.2, 6.3 or 6.4 of this Declaration (except when such failure is caused by another Owner or Unavoidable Delay) and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, such other Owner or Owners to whom such services are to be provided shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to Section 6.6, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance.

6.7 If, at any time, a Defaulting Owner shall fail to pay to any Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Section 6.6 hereof for ten (10) days after written notice from the Creditor Owner demanding payment of said sum of money, then the Creditor Owner may discontinue furnishing of 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 the Defaulting Owners obligation to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, the Defaulting Owner shall not be deprived of any such services unless and until it shall finally be determined by unreviewable court proceedings, arbitration or otherwise that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

## ARTICLE 7

### STRUCTURAL SUPPORT

7.1 No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Improvements on any other portions of the Total Parcel.

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7.2 Except in the case in which Article 11 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the following provisions shall apply:

(a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or Owners benefited by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 22 would not require such approval) the Owners of the portion of the Total Property affected thereby, the Architect and Mortgagees with respect to any portions of the Total Property affected by a Mortgage and, subject to the provisions of Article 12 hereof, shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support.

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except as otherwise provided in Article 22 hereof) the Owners of the portions of the Total Property affected thereby, the Architect and the Mortgagees with respect to the portion of the Total Property affected by a Mortgage and, subject to the provisions of Article 12 hereof, shall pay all costs and expenses, including any architects, or other fees, in connection with the construction of substitute or additional support.

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

7.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 7.2 shall be determined as responsible for such construction, any Owner shall, upon not less than thirty (30) days, advance written notice to the others 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 any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any Owner's provisions of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners, then the dispute shall be submitted to the Architect for a determination.



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Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of the other portion of the Total Property during any period of reconstruction.

## ARTICLE 8

### COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

8.1 The Owner of the Residential Property, the Owner of the Commercial Property and the Owner of the Garage Property:

(a) shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if noncompliance by it with respect to its portion of the Total Property or any part thereof would subject any other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owner or for the Improvements themselves or would jeopardize any other Owner's right to occupy or utilize beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property; and

(b) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's portion of the Total Property if noncompliance by it with respect to its portions of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners, or (ii) render any other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring any other Owner's portion of the Total Property; 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 other Owner's portion of the Total Property, such other Owner 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 other Owner, then the 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 the Creditor Owner may cause

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such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate (as hereinafter defined) from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

8.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, materialmen or any other like lien on any other Owner'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 hereunder or services to be furnished pursuant to Article 6 hereof, arising by reason of its act or any work or materials which it has ordered. Notice of the filing of any such lien shall be served upon the Mortgagees of the Mortgages. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgagees under the Mortgages; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner, and to the Mortgagees if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner or, if loan documents so provide, to the Mortgagees, either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Mortgagees, if applicable, 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 the Creditor Owner and the Mortgagees of the Mortgages, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgages, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

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8.3 Each Owner (hereinafter in this Section 8.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 8.3, the "Indemnitee") from and against any and all claims against the Indemnitees for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the 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 the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

8.4 Without limiting the provisions of Section 8.1(a), neither the Owner of the Residential Property nor the Owner of the Commercial Property nor the Owner of the Garage Property shall make any Alterations (as that term is hereinbelow defined in Section 22.1) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of (a) the Chicago Zoning Ordinance as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portions thereof or (b) that certain Planned Unit Development Ordinance applicable to the Total Property passed by the City Council of Chicago on August 21, 1974. The Commercial Property, Residential Property and Garage Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Total Property without the consent of the other Owners, which consent shall not be unreasonably withheld, except that no Owner shall be required to consent to any change in the Chicago Zoning Ordinance as applicable to any portions of the Total Property which (i) increases density, (ii) increases maximum height in any portion of the Total Property, or (iii) changes the character or permitted use of any portion of the Total Property.

## ARTICLE 9

### REAL ESTATE TAXES

9.1 The Owners shall make good faith efforts and cooperate with each other so that the Residential Property and Non-Residential Property shall, when and as soon as possible,

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be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor ("Assessor") of Cook County, Illinois. From and after submission of the Residential Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. The Owners of the Non-Residential Property shall pay the real estate taxes levied upon the Non-Residential Property, and the Owner of the Residential Property shall pay the real estate taxes levied upon the Residential Property. The Owners of the Non-Residential Property shall also have the right to divide the Non-Residential Property into two (2) separate tax parcels attributable to the Commercial Property and Garage Property.

9.2 At such time as the Non-Residential Property and Residential Property are separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes and special assessments. Until separately assessed and taxed, the assessed valuation respecting the "land" and "improvements" (as hereinafter defined) and the taxes computed thereon shall be allocated between the Owners and paid by the respective Owners as set forth in this Section 9.2. Allocations of assessments set forth herein are based upon information contained in the official real estate tax record cards ("cards") of the Assessor, which cards show assessed valuations of land and improvements. Since the terminology used in the Assessor's cards may vary from the terms used in this Declaration, for purposes of this Section 9.2 the following definitions shall apply: "land" shall mean Total Parcel; "improvements" shall mean Improvements; "residential improvements" shall mean Residential Improvements; "non-residential improvements" shall mean Non-Residential Improvements.

(a) Allocation of Assessed Valuation of Land. The assessed valuation of the land shall be allocated as follows:

(i) Allocation of assessed valuation of land to Residential Property equals:

<u>Value of residential improvements</u>	x	Assessed
Value of improvements		valuation
		of land

(ii) Allocation of assessed valuation of land to Non-Residential Property equals:

Assessed valuation of land minus assessed valuation of land allocated to Residential Property (under Section 9.2(a)(i)).

(b) Allocation of Assessed Valuation of Improvements. The assessed valuation of the improvements shall be allocated as follows:

(i) Allocation of assessed valuation of improvements to Residential Property equals:

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<u>Value of residential improvements</u>	x	Assessed
Value of improvements		valuation of
		improvements

(ii) Allocation of assessed valuation of improvements to Non-Residential Property equals:

Assessed valuation of improvements minus assessed valuation of improvements allocated to Residential Property (under Section 9.2(a)(i)).

(c) Allocation of Payments of Taxes. The Owner of the Non-Residential Property shall pay the combined tax bill or bills for the Total Property prior to their due date. The Owner of the Residential Property shall be responsible for and shall pay or reimburse the Owner of the Non-Residential Property (within ten (10) days after the demand of the Owner of the Residential Property therefor) for its share of the total real estate taxes levied in the combined tax bill or bills for the Total Property, which share shall be calculated as follows:

Residential Property share equals:

Total assessed valuations allocated to Residential Property, under <u>Sections 9.2(a) and 9.2(b) hereof</u>	x	Total real estate taxes
Assessed valuation of land and improvements		

The value of the residential improvements and all other improvements shall be determined by the Declarant.

9.3 If any Owner (the "Defaulting Owner") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 9, then any other Owner (the "Creditor Owner") may, after at least ten (10) days, written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article 12 hereof.

9.4 Any Owner may, if it shall so desire, endeavor at any time or times, to obtain a lowering of the assessed valuation upon the Property for the purpose of reducing taxes thereon ("Protesting Owner"). In the event such protest shall be made by a Protesting Owner prior to the time that the Residential Property and Non-Residential Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owners at least ten (10) days prior to the filing of the objection. Any non-Protesting Owner

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may elect within ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event any other Owners fail to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose and any such tax refund shall be the property of Protesting Owner. Notwithstanding the above, if any other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes reflecting the reduction, if any, in such taxes, the Owners who have protested shall apportion the tax refund in accordance with their respective portions of such real estate taxes.

## ARTICLE 10

### INSURANCE

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

(a) The Owner of the Commercial Property and the Owner of the Garage Property shall each keep their respective portion of the Improvements (including without limitation the foundation) insured for no less than "all risk" or "special form" coverage on real property and broad form on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. The Owner of any portion of the Total Property that constitutes the Condominium Property, including the Owner of the Garage Property and/or Owner of the Commercial Property if the Garage Property and/or Commercial Property are submitted to the Act, shall keep its portion of the Improvements 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%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(b) The Owner of the Commercial Property, the Owner of the Residential Property and the Owner of the Garage Property shall maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, residential buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000.00 for personal and bodily injury or property damage with at least additional \$3,000,000 umbrella coverage.

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(c) The Owner of the Commercial Property, the Owner of the Residential Property and the Owner of the Garage Property shall jointly insure under a single policy their boiler and machinery risks, on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis for not less than \$5,000,000 limit each accident, and also providing coverage, at the option of the Owner of the Commercial Property, 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 Mortgagees.

10.2 Unless all Owners otherwise agree in writing, but in any event subject to the approval of the Mortgagees, with respect to each of the insurance policies required in Sections 10.1(a) (b), and (c) the interest of all of the Owners shall be insured by the same insurance companies provided such policies are available on a commercially reasonable basis. In the case of any insurance policy covering the Owners jointly, the Owners shall apportion the premium based on the manner in which the insurance company or a third party acceptable to all of the Owners apportion of such premiums. Such policies (except policies required under Section 10.1(c) may also be issued separately by the same insurance company with respect to each Owner's interest in the Total Property. In the event the Owner of the Residential Property, the Owner of the Commercial Property and the Owner of the Garage Property cannot agree upon the insurance companies to provide the insurance required under Sections 10.1(a), 10.1(b) and 10.1(c) hereof or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall be submitted to arbitration as provided in Article 13 hereof. Insurance policies required by Section 10.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/VII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. So long as any portion of the Total 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 applicable Condominium Declaration as being responsible for such insurance, and any Unit Owner's policies shall be subject to and consistent with the provisions of this Article 10. The Owner of the Garage Property or Owner of the Commercial Property, as applicable, may procure and maintain the insurance specified in Section 10.1(b) covering their separate interests, apart from the Owner of the Residential Property; provided, that the insurance company is authorized and licensed to transact business in the State of Illinois and holds a current Policyholder's Alphabetical and Financial Size Category Rating of not less than A/VII according to Best's Insurance Reports or a substantially equivalent rating from a nationally recognized insurance rating service. Such policy or policies may be issued in combination covering one or all items and covering jointly the interests of

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each Owner, and shall name the other Owners as additional insureds. Each of the Owners hereby agree to cooperate to procure and maintain insurance policies which jointly cover the interests of all of the Owners.

10.3 Each policy described in Section 10.1 and Section 10.2 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide, except for liability insurance described in Section 10.1(b), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days, advance written notice shall be sufficient and (iv) shall, if available, provide, except for the liability insurance required under Section 10.1(b), that all amounts payable thereunder shall be paid to the Depository in accordance with Articles 17 and 22 hereof. Nothing contained in this Section 10.3 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that a Mortgagee under any Mortgage receiving any proceeds of any insurance policy described in Section 10.1(a) shall deposit the insurance proceeds with the Depository in accordance with Articles 17 and 18 to the extent that the Owner of the portion of the Total Property subject to such Mortgage receiving such proceeds would be required to do so, except that such obligation for such deposit by a Mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then-uncured default under the applicable mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the Mortgagee, will be at least equal to the cost, as estimated by the Mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

10.4 Limits of liability or types of insurance specified in this Article 10 or carried by the Owners shall be reasonable and prudent for an Owner of a first-class residential and/or commercial facility, as applicable, and shall be jointly reviewed by the Owners at least annually to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, 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.

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Deductible amounts for insurance required under Sections 10.1(a) and 10.1(b) shall be in such amounts as are customary or prevalent for an Owner of a first-class residential and/or commercial facility, as applicable. 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, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance consultant to perform such review periodically on their behalf and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

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

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

10.7 In the event the Owner of a portion of the Total Property is subject to any loads, including, without limitation, any restaurant load, general liability load or umbrella liability load as a result of any use or operation of any other portion of the Total Property, in connection with any insurance policy maintained pursuant to this Article 10, then the Owner whose use or operation results in such loads shall be liable for the reimbursement to the Owner or Owners subject to such loads for such increased amounts.

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## ARTICLE 11

### MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

11.1 The Owner of the Residential Property, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Commercial Property or the Owner of the Garage Property pursuant to this Declaration, shall keep (a) the Residential Property and all Facilities located therein or for which the Owner of the Residential Property is assigned Maintenance responsibility in this Declaration and (b) the pavement, fountains, landscaping, stairways, railings, sidewalks, surface course of driveways, curbs, gutters and drains forming part of or located on or about the Plaza Deck and the City of Chicago right of way adjacent to the Plaza Deck in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof (except for structural repairs to the Plaza Deck which shall be made by the Owner of the Garage Property), or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Residential Property further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in Exhibits 6.1(a) through 6.1(o) hereto, any such costs incurred in accordance with this Section 11.1 shall be paid for by the Owner of the Residential Property.

11.2 Except as expressly provided in this Section 11.2 the Owner of the Commercial Property shall at its sole cost and expense, make all repairs and replacements of, in, on, within, upon or about the Commercial Property whether said repairs or replacements are to the interior and exterior thereof, or structural and nonstructural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.

11.3 The Owner of the Garage Property shall, at its sole cost and expense, keep the Garage Property (including all structural portions of the Plaza Deck and the planters located thereon, but not including the portions of the Plaza Deck which are the responsibility of the Owner of the Residential Property pursuant to Section 11.1 hereof) 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 and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by

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wear, tear, obsolescence, defects or otherwise. The Owner of the Garage Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property.

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

11.5 If the Improvements are damaged by fire or other casualty and if the provisions of Section 11.4 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clauses (a), (b) or (c) of Section 11.4, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners who are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval

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of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article 13 hereof. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees, if required.

11.6 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 11.5 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owners' Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

11.7 In any instance of repair or restoration pursuant to Sections 11.4 or 11.5 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction, cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 11. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or a loan commitment, reasonably satisfactory to the other Owners and the Mortgagees, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 11.7, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such

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payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment, plus interest at the Default Rate from the date of payment, by the Creditor Owner to the date of reimbursement to the Creditor Owner.

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

11.9 If any or all of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Mortgagees, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statues, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, subject to the rights of the Mortgagees. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 11.4, 11.5, 11.6, 11.7 and 11.8 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of the applicable ordinances of the City of Chicago caused by the other party's failure to rebuild.

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

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## ARTICLE 12

### LIENS, RIGHTS AND REMEDIES

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

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

- (a) the structural integrity and safety of the Improvements;
- (b) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the Improvements;

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

(d) the architectural unity and aesthetic appearance of the restored improvements as a first-class, mixed use property.

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

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

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

12.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first

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became due hereunder until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by LaSalle National Bank in Chicago, Illinois, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then-maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "prime rate" or reasonable equivalent thereof is not announced by LaSalle National Bank, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

12.6 Subject to the limitations set forth in Article 16 hereof, the rights and remedies of an Owner provided for in this Article 12 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. 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.

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

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

12.9 The Owner of the Commercial Property shall coordinate all requests and contacts between the Owner of any Condominium Property and the tenants of the Commercial Property relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render the Owner of the Commercial Property liable to either such tenants of the Commercial Property or the Unit Owners or tenants of the Units, or the Owner of any Condominium Property for acts of any other party.

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12.10 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, and such fees and costs shall be added to the amount of any applicable lien created under this Article 12.

12.11 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article 20 hereof, the Creditor Owner in any proceeding arising out of this Article 12, together with full power and authority to compromise any claims out of the terms of this Article 12 and to grant releases.

## ARTICLE 13

### ARBITRATION

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

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$100,000, which \$100,000 shall mean \$100,000 in 1994 equivalent dollars, which shall not be resolved within sixty (60) days after same have arisen: and

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

Any such dispute, claim, controversy or matter is referred to herein as a "Matter". Arbitration of any Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other 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 Mortgagees of Mortgages shall be parties to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagees of Mortgages hereunder.

13.2 Unless otherwise agreed to in writing by the parties to the arbitration, within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate three (3) arbitrators to resolve the Matter. If the parties fail to designate the arbitrators within such time period, arbitrators shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrators shall be experienced as to the design, construction and/or operation, as the Matter requires, of high-rise, multi-use structures similar to the Building. Except where contrary to

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the provisions set forth in this Declaration, the AAA Commercial Arbitration Rules 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.

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

13.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article 13. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any party to the Matter by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any matter is resolved as provided in this Article 13.

13.5 With respect to any Matter subject to arbitration under this Article 13, it is agreed that the arbitration provisions of this Article 13 shall be the sole remedy of the Owners under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. 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 13 or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 13 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 and the Mortgagees of the Mortgages and judgment thereon shall be entered by any court having jurisdiction.

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13.6 For purposes of this Article 13, "1994 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 1994. The 1994 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 November 1, 1994, and the denominator of which is the Consumer Price Index for November 1, 1994. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and the Clerical Workers, City of Chicago, All Items (Base Year 1967 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners is such index is not longer available.

## ARTICLE 14

### UNAVOIDABLE DELAYS

14.1 No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

## ARTICLE 15

### CONDEMNATION

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

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15.2 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 of a temporary use of any space not affecting services described in Section 6.1 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property.

15.3 In the event of (a) a taking (other than a temporary taking) of a part of the Residential Property only (not affecting services described in Sections 6.1, 6.2 or 6.3 hereof, except those having minimal or incidental effect), (b) a taking (other than a temporary taking) of a part of the Commercial Property only, or (c) a taking (other than a temporary taking) of a part of the Garage Property only, then, subject to the provisions of Section 15.6 hereof, the Owner of the portion of the Total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 18 hereof and to retain any excess not required for such repair and restoration.

15.4 In the event of a taking other than (a) a temporary taking described in Section 15.2 hereof, (b) a taking described in Section 15.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 15.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Mortgagees of the Mortgages. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Property were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Mortgagees of the Mortgages, if required. In the event such Owners, and the Mortgagees of the Mortgages, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article 13 hereof. If such repair and restoration is to be performed solely in the portion of the Total Property owned by one of the Owners, then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined, the approval of the Owners of, and any Mortgagees of the Mortgages with respect to, the other portion of the Total Property shall not be required with respect to the plans and specifications

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therefor, nor shall the consent of the Owners of, and any Mortgagees of the Mortgages with respect to, the other portion of the Total Property be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3, 4 and 5 hereof and for the furnishing of services under Article 6 hereof.

15.5 The Award for any taking described in Section 15.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 15.6 hereof). Each portion of the Award attributable to a particular portion of the Total Property shall only be utilized to repair and restore that portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property over the cost of repair and restoration to that portion of the Total Property shall then be allocated to the respective Owners of that portion of the Total Property, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

15.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 15.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 15.3 and 15.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if all the Owners of the other portions of the Total Property affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Property owned by it and shall restore its portion of the Total Property to a slightly and safe condition and in such a manner as to safeguard the other portions of the Total Property, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 15.4 hereof are applicable.

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

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## ARTICLE 16

### ARCHITECT

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

16.2 In any instance when the Architect serving pursuant to Section 16.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Mortgagees, an opportunity to furnish information or data or to present such party's views.

16.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision

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of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment, plus interest at the Default Rate from the date of payment by the Owner to the date of reimbursement to such Owner.

## ARTICLE 17

### DEPOSITARY

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

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

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

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

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