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COOK COUNTY RECORDER

OPERATIONS AGREEMENT

between

THE OPERNESTRAL ASSOCIATION

and

THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES

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## OPERATIONS AGREEMENT

The Borg-Warner Building and Bustle  
200 South Michigan Avenue

THIS OPERATIONS AGREEMENT (this "Agreement") is entered into as of this 22nd day of February, 1994, by and between THE ORCHESTRAL ASSOCIATION, an Illinois not-for-profit association (the "Bustle Owner") and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (the "Tower Owner"; the Bustle Owner and the Tower Owner are referred to herein collectively as the "Owners" and individually as an "Owner").

## W I T N E S S E T H:

WHEREAS, the Bustle Owner, as Purchaser, and Michigan-Adams Building Company, an Illinois limited partnership, Michigan-Adams Building Company Limited Partnership No. 2, an Illinois limited partnership, and Michigan-Adams Building Company Limited Partnership No. 3, an Illinois limited partnership (such entities and their successors and assigns are referred to herein collectively as the "Seller"), as Seller, entered into an Exchange or Purchase and Sale Agreement, dated as of February 1, 1993 (such agreement, as amended, is referred to herein as the "Purchase Agreement"), pursuant to which the Bustle Owner agreed to purchase, and Seller agreed to sell, the real estate legally described in Exhibit A attached hereto (the "Land"), and all improvements thereon (other than fixtures or other improvements owned by tenants under the terms of Tenant Leases), including (without limitation) a 22-story office building located on the Land which includes 431,231 gross sq. ft. and approximately 343,934 net rentable sq. ft., commonly known as the "Borg-Warner Building" (the "Improvements");

WHEREAS, the Tower Owner and the Bustle Owner entered into a certain Property Agreement, dated as of the date hereof (the "Property Agreement"), pursuant to which, among other things, the Bustle Owner conveyed to the Tower Owner certain interest in, and assigned to the Tower Owner certain rights and delegated to the Tower Owner certain obligations of the Bustle Owner under the Purchase Agreement with respect to the portion of, the Land described on Exhibit B attached hereto (the "Tower Land") and the portion of the Improvements located thereon (the "Tower");

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Improvements"; the Tower Land and the Tower Improvements are referred to herein as the "Tower Project";

WHEREAS, pursuant to the Purchase Agreement and the Property Agreement, the Bustle Owner purchased the portion of the Land described on Exhibit C attached hereto (the "Bustle Land"), and the portion of the Improvements located thereon (the "Bustle Improvements"; the Bustle Land and Bustle Improvements are referred to herein as the "Bustle Project"), and the Tower Owner purchased the Tower Project from Seller;

WHEREAS, the Bustle Project and the Tower Project may be structurally and functionally dependent on the other and may depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Bustle Project and Tower Project;

WHEREAS, pursuant to the Property Agreement, the Bustle Owner intends (without obligation) to demolish the Bustle Improvements and erect new improvements separated from the Tower Improvements; provided, however, that the Bustle Owner is obligated under the Property Agreement to do the Separation Work (as defined in Section 15.1 hereof);

WHEREAS, until the Bustle Improvements and Tower Improvements are separated as provided in the Property Agreement, the Bustle Owner and Tower Owner desire to provide for the efficient operation of the Tower Project and Bustle Project, and to assure the harmonious relationship of the Tower Owner and Bustle Owner, by providing for, declaring and creating certain easements, covenants and restrictions benefitting and burdening the Tower Project and Bustle Project, and to provide for the division of financial and operating responsibilities therefor, all as hereinafter set forth in this Agreement,

WHEREAS, the Bustle Owner and Tower Owner agree that an exact apportionment of the costs of providing the services contemplated hereby based upon relative use is impossible or impracticable to obtain at the present time; the Owners further agree that the method of allocation of costs set forth in this Agreement represents a reasonable method of allocation of that portion of such costs attributable to the Bustle Project and to the Tower Project based on relative use.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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## ARTICLE 1 DEFINITIONS AND REFERENCES

**Section 1.1 Definitions.** For the purposes of this Operations Agreement, the following terms shall have the respective meanings indicated below:

**CREDITOR OWNER:** Except where otherwise defined herein in a specific context, an Owner to whom a payment of money or performance of other duty or obligation is owed under this Agreement by any other Owner who has failed to make such payment or perform such duty or obligation as and when required hereunder.

**DEFAULTING OWNER:** Except where otherwise defined herein in a specific context, an Owner who has failed to make a payment of money under this Agreement to any other Owner or has failed to perform any of its duties or obligations as and when required under this Agreement.

**EASEMENTS:** All easements provided for, declared or created pursuant to or in accordance with the provisions of this Agreement.

**EMERGENCY SITUATION:** A situation (a) impairing or imminently likely to impair structural support or Facilities of the Project; or (b) causing or imminently likely to cause bodily injury to persons or substantial physical damage to all or any portion of the Project or any property within or about the Project; or (c) causing or immediately likely to cause substantial economic loss to either Owner; or (d) materially interfering with the beneficial use by either Owner of its respective portion of the Project. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

**FACILITIES:** Any portions of the Bustle Project and Tower Project which at any time constitute truck loading platforms (if not for the exclusive use of one occupant); service corridors and stairways providing access to such truck loading facilities; exterior walls, windows, walks, sidewalks and arcades; stairways, elevators, escalators and ramps; interior corridors, stairs, arcades and balconies; directory signs and equipment and information/reception booth; underground vaulted space beneath public walkways; lockers and locker rooms, washrooms, drinking fountains, toilets, and other public facilities; antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, enunciators, equipment (including, without

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limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, and the like used in providing services from time to time in any part of the Project, including, without limitation, air conditioning, alarm, antennae, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service.

**MAINTENANCE:** Operation, maintenance, repair (whether ordinary or extraordinary), reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, restoration, painting, installation and replacement when necessary or desirable (except repair and restoration required by Section 8.3 hereof) and includes the right of access to and the right to remove from the Project portions of Facilities for any of the above-recited purposes, subject, however to any limitations set forth elsewhere in this Agreement. To "Maintain" means to operate, maintain, repair, recondition, reconfigure, inspect, test, clean, restore, paint, install and replace Facilities and areas encumbered by Easements.

**PERMITTEE:** The Owners, all persons entitled by lease or license to use or occupy space within the Project and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires.

**PROJECT:** The Land and the Improvements.

**UNAVOIDABLE DELAY:** The meaning ascribed thereto as set forth in Article 11 hereof.

## ARTICLE 2 EASEMENTS APPURTENANT TO BUSTLE PROJECT

Section 2.1 Easements on Tower Project. In general for purposes of this Article 2, the following shall apply:

A. The Tower Owner is the grantor, and the Bustle Owner is the grantee, of the easements described in this Article 2. The easements granted under this Article 2 shall bind the Tower Owner and its successors and assigns, and shall benefit the Bustle Owner and its successors, assigns and Permittees.

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B. The easements granted under this Article 2 shall benefit the Bustle Project and shall be binding upon the Tower Project.

C. The easements granted under this Article 2 shall expire on the Separation Date, as defined in Section 15.2.

D. Each easement created under this Article 2 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Tower Project shall be subject (except in an Emergency Situation) to such reasonable limitations as the Tower Owner may, from time to time, after consultation with the Bustle Owner, impose with respect to the establishment of limited paths of ingress and egress to prevent any unreasonable interference with the use and operation of the Tower Project; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment of any such easement.

E. Any dispute concerning the existence, location, nature and scope of any of the easements granted under this Article 2 shall constitute an Arbitrable Dispute.

**Section 2.2 Structural Support.** The Tower Owner hereby grants to the Bustle Owner a nonexclusive easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Tower Project for the support of (i) the Bustle Project, and (ii) any Facilities located within the Tower Project with respect to which the Bustle Owner is granted an easement under this Agreement.

**Section 2.3 Facilities.** The Tower Owner hereby grants to the Bustle Owner a nonexclusive easement (i) for the use for their intended purposes of all Facilities at any time located in the Tower Project and which are either connected to Facilities at any time located in the Bustle Project (and any replacements thereof) or which otherwise provide or shall be necessary to provide the Bustle Project with any utilities or other services or which may otherwise be necessary to the operation of the Bustle Project, and (ii) permitting the exercise of the rights granted to the Bustle Owner pursuant to Section 5.4 hereof during any period in which said rights may be exercised.

**Section 2.4 Maintenance.** The Tower Owner hereby grants to the Bustle Owner a non-exclusive easement over, on, across and through the Tower Project to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Bustle Project as required or permitted pursuant to this Agreement, or to the extent reasonably necessary to exercise the Easements set forth in this Article 2, or (ii) to

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permit the Bustle Owner to perform Maintenance as required hereby.

**Section 2.5 Ingress, Egress.** The Tower Owner hereby grants to the Bustle Owner a nonexclusive easement for ingress and egress (a) by persons, materials and equipment over, on, across and through those sections or portions of the elevators, common fire stairways and corridors located, from time to time, in the Tower Project, and (b) over, on, across and through the first floor lobby and entranceway and all other public areas on the first and second floors of the Tower Project.

**Section 2.6 Deliveries.** The Tower Owner hereby grants to the Bustle Owner a nonexclusive easement for the use of all freight elevators, stairways, sidewalks, ramps, walkways, service areas and loading docks located in the Tower Project and providing ingress to or egress from the Bustle Project and necessary or desirable for the efficient delivery or dispatch of materials, supplies, goods, refuse and the like to and from the Bustle Project, as limited herein. The Bustle Owner acknowledges and agrees that the use of such freight elevators, stairways, sidewalks, ramps, walkways, service areas and loading docks by the Bustle Owner and its Permittees shall be subject to reasonable rules and regulations promulgated by the Tower Owner from time to time concerning the use of such facilities during reasonable hours and the coordination of the use of such facilities by the Bustle Owner with the use thereof by the Tower Owner.

### ARTICLE 3 EASEMENTS APPURTENANT TO TOWER PROJECT

**Section 3.1 Easements on Bustle Project.** In general, for purposes of this Article 3, the following shall apply:

A. The Bustle Owner is the grantor, and the Tower Owner is the grantee, of the easements described in this Article 3. The easements granted under this Article 3 shall bind the Bustle Owner and its successors and assigns, and shall benefit the Tower Owner and its successors, assigns and Permittees.

B. The easements granted under this Article 3 shall benefit the Tower Project and shall be binding upon the Bustle Project.

C. All of the easements granted under this Article 3 shall expire on the Separation Date (as defined in Section 15.2 hereof), except that the Parking Easement (as defined below) shall expire as set forth in Section 3.5 below.

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D. Each easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Bustle Project shall be subject (except in an Emergency Situation) to such reasonable limitations as the Bustle Owner may, from time to time, after consultation with the Tower Owner, impose with respect to the establishment of limited paths of ingress and egress to prevent any unreasonable interference with the use and operation of the Bustle Project; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment of any such easement.

F. Any disputes concerning the existence, location, nature and scope of any of the easements granted under this Article 3 shall constitute an Arbitrable Dispute.

**Section 3.2 Structural Support.** The Bustle Owner hereby grants to the Tower Owner a nonexclusive easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Bustle Project for the support of (i) the Tower Project, and (ii) any Facilities located within the Bustle Project with respect to which the Tower Owner is granted an easement under this Agreement.

**Section 3.3 Facilities.** The Bustle Owner hereby grants to the Tower Owner a nonexclusive easement for the use for their intended purposes of all Facilities at any time located in the Bustle Project and which are either connected to Facilities at any time located in the Tower Project (and any replacements thereof) or which otherwise provide or shall be necessary to provide the Tower Project with any utilities or other services or which may otherwise be necessary to the operation of the Tower Project.

**Section 3.4 Maintenance.** The Bustle Owner hereby grants to the Tower Owner a non-exclusive easement over, on, across and through the Bustle Project to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Tower Project as required or permitted pursuant to this Agreement, or to the extent reasonably necessary to exercise the Easements set forth in this Article 3, or (ii) to permit the Tower Owner to provide the Services to Bustle (defined hereinafter) or to perform Maintenance as required hereby.

**Section 3.5 Parking Easement.** The Bustle Owner hereby grants to the Tower Owner an exclusive easement (the "Parking Easement") over, on, across and through the lower level of the Bustle Improvements for the following purposes: (a) motor vehicle and pedestrian access, ingress and egress for parking motor vehicles in the seventeen (17) parking spaces in the lower

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level of the Bustle Improvements, and for the use of such parking spaces, and (b) all other acts reasonably necessary to allow the Tower Owner (and its successors, assigns and Permittees) the use of such parking spaces pursuant to the Property Agreement. The Tower Owner shall be entitled to all parking revenues generated from parking spaces in the lower level of the Bustle Project during the term of the Parking Easement, and shall, at the Tower Owner's sole cost and expense, maintain such parking area.

Notwithstanding anything contained herein to the contrary, the Parking Easement shall expire and terminate on the earlier of the Separation Work Commencement Date (as defined in Section 15.1 hereof) or the date on which the Bustle Owner causes to exist within the lower level of the Tower Improvements 23 self-park parking spaces pursuant to the Property Agreement.

## ARTICLE 4 STRUCTURAL SUPPORT

No Owner shall take any action which would adversely affect the structural safety or integrity of the Tower Project, the Bustle Project or any Improvements or any components thereof.

## ARTICLE 5 BUILDING SERVICES

**Section 5.1 Services to Bustle.** The Tower Owner shall furnish or cause to be furnished to the Bustle Project, when, as and if required:

Heating, ventilation, air conditioning, janitorial service, utilities, security, snow removal, trash removal; maintenance and repair of alarm systems, roof, fire suppression systems, landscaping, electrical service panels, plumbing and other mechanical systems; and each such other services as were provided to the Bustle Project by the Seller (or its predecessor) during calendar year 1993, all in the manner, to the standards, during the hours of operation, and of the quality, approximately, as have been provided to the Bustle Project by the Seller (or its predecessor) during calendar year 1993, and such other services or level of services as are required to be furnished by the landlord to any tenant of space within the Bustle Project during the term of such lease (collectively, the "Services to Bustle"); provided, however, that the level of services may be reduced at the Bustle Owner's election for areas within the Bustle Improvements which are vacant.

**Section 5.2 Services in General.** The Tower Owner shall make a good-faith effort to operate its Facilities and furnish all services as required under this Article 5 in a manner which

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will provide the Bustle Owner with comfortable occupancy and enjoyment of its portion of the Project for its intended use, but in no event shall the Tower Owner be obligated to use more than reasonable diligence in performing the services required of it under this Article 5, be liable for consequential damages for failure to perform hereunder or be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. The Tower Owner reserves the right to curtail or halt the performance of any service hereunder at any reasonable time and for a reasonable period of time to the extent reasonably necessary to perform Maintenance or in an Emergency Situation. In any event, the Tower Owner's obligation to provide the Services to Bustle shall expire upon the Bustle Owner's relocation of the bathrooms in the first floor of the Bustle Improvements to the first floor of the Tower Improvements (the "Relocation Date").

**Section 5.3 Cost of Services.** As compensation for the Services to Bustle to be provided to the Bustle Project, the Bustle Owner shall pay to the Tower Owner, for the period commencing on the date of the closing of the Purchase Agreement and ending on the Relocation Date, an amount equal to \$33,063.00 per annum, in twelve equal monthly installments of \$2,755.25 (prorated per diem for partial months), which shall be due on the first day of each such month.

## **Section 5.4 Self-Help.**

A. If the Tower Owner shall fail to perform the services required to be performed by it pursuant to this Article 5 (except when such failure is caused by the Bustle Owner or Unavoidable Delay or the Tower Owner is entitled to discontinue such service pursuant to Section 5.5 hereof) and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner from the Creditor Owner, such Creditor Owner shall have the right to perform the same until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation.

B. During any period in which any Creditor Owner is performing pursuant to this Section 5.4, the Defaulting Owner shall make payments to the Creditor Owner within ten (10) days of delivery to the Defaulting Owner of an invoice evidencing the performance of any such services and setting forth in reasonable detail the Creditor Owner's actual costs of such performance.

**Section 5.5 Failure to Pay.** If at any time the Bustle Owner fails to pay to the Tower Owner any sum of money payable to the Tower Owner pursuant to the provisions of Section 5.3 hereof

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within ten (10) days after receipt of written notice from the Tower Owner demanding payment of said sum of money, then the Tower Owner (as a Creditor Owner) may discontinue furnishing to the Defaulting Owner the services for which payment has not been received until said sum of money is paid; provided, however, that the Creditor Owner may not discontinue any such services if such discontinuance would cause an Emergency Situation or hinder steps to remedy or otherwise exacerbate an existing Emergency Situation.

**Section 5.6 No Interference by Bustle Owner.** The Bustle Owner agrees that, except in an Emergency Situation, the Bustle Owner will not unreasonably interfere with or impede the Tower Owner's providing of Services to Bustle pursuant hereto.

## ARTICLE 6

### COMPLIANCE WITH LAWS; REMOVAL OF LIENS

**Section 6.1 Compliance with Laws.** Each Owner shall comply with all laws, codes, rules, orders, ordinances, regulations and requirements applicable to such Owner's respective portion of the Project, now or hereafter enacted or promulgated by the United States of America, State of Illinois, City of Chicago and any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Project, the Improvements or any portion thereof, if noncompliance would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to such other Owner or for the Project itself or would jeopardize such other Owner's right to occupy or utilize beneficially its portion of the Project or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner.

**Section 6.2 Compliance with Insurance Requirements.** Each Owner shall comply with all rules, regulations and requirements of any insurance policy affecting insurance coverage on any of the other Owner's portion of the Project, if noncompliance by it with respect to its portion of the Project or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owner, or (ii) render any of the other Owner's portion of the Project uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of the Project; provided, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in the other Owner's portion of the Project, such other 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

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

**Section 6.3 Removal of Liens.** Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on the other Owner's portion of the Project, or on its portion of the Project if the existence or foreclosure of such lien on its portion of the Project would adversely affect any Easement created hereunder or services to be furnished pursuant to Article 5 hereof, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor Owner may take such action as the Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all reasonable costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien so long as within said thirty (30) day period such lien cannot be foreclosed and the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to such Creditor Owner.

**Section 6.4 Indemnity.** Each of the Owners (hereinafter in this Section 6.4, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this Section 6.4, the "Indemnitee") from and against any and all claims against Indemnitee for losses, liabilities (civil or criminal), damages, judgments, costs and expenses, and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or

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governmental or quasi-governmental authority, other than the Indemnatee, arising from the Indemnifying Owner's or its Permittees' use, possession or management of the Indemnifying Owner's portion of the Project or activities therein or arising out of the Indemnifying Owner's or its Permittees' use, exercise or enjoyment of any 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 Indemnatee by reason of any such claim, Indemnifying Owner, upon notice from Indemnatee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnatee; provided, however, that the Indemnatee may, at its option, assume such defense (in which event the Indemnifying Owner shall still be required to pay all costs of such defense). Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnatee. The Indemnatee shall not settle any such indemnified claim without the Indemnifying Owner's written approval.

## ARTICLE 7 INSURANCE

**Section 7.1 Insurance Policies.** The Owners shall procure and maintain the following insurance:

A. The Tower Owner shall keep the Tower Project insured with "all risks" coverage of real property including broad form named perils on personal property for an amount not less than 100% of the full replacement cost thereof. Such coverage shall include coverage for loss of rental income caused by business interruption or extra expense incurred to reduce such loss of income in such amounts as may be carried by prudent owners of commercial office buildings in the City of Chicago, Illinois. The Bustle Owner shall keep the Bustle Project insured for an amount not less than the estimated demolition costs of the Bustle Improvements (excluding foundations).

B. Each Owner shall maintain commercial general liability insurance covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about (i) the portion of the Project owned by such Owner, or as a result of operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained herein), or (ii) any other portion of the Project as a result of the actions of such Owner, agents or employees. Such insurance shall be primary coverage as to claims for injury or damage resulting from the acts or

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failure to act of an Owner, with any insurance carried by the other Owner being excess coverage. Such insurance shall be in such amounts as may be required by law and as from time to time shall be carried by prudent owners of commercial office buildings in the City of Chicago, Illinois, but in all events with limits of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an additional \$4,000,000 umbrella coverage.

C. The Tower Owner shall insure its boiler and machinery risks, on a comprehensive, blanket basis covering all equipment, machinery and apparatus within the Project owned by the Tower Owner, consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment and piping and ducts on a repair or replacement basis for not less than one hundred percent (100%) of the replacement cost thereof, and also providing coverage for loss of income caused by business interruption or extra expense incurred to reduce such loss of income or for loss of use arising from a failure of such equipment, machinery and apparatus owned by the Tower Owner or the Bustle Owner, in such amounts as may be carried by prudent owners of commercial office buildings in the City of Chicago, Illinois.

**Section 7.2 Insurance Companies.** Insurance policies required by this Article shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized rating service. Insurance policies required by Sections 7.1.A and 7.1.C shall be purchased from a single insurance company or group of companies designated by the Tower Owner and shall contain the same terms and conditions of coverage and policy wording, and provide for the adjustment of claims with the insurer by the Tower Owner.

**Section 7.3 Insurance Generally.** Each policy described in Section 7.1 hereof: (i) shall provide that the knowledge or actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under such policy; (ii) shall, with respect to the insurance described in Section 7.1.B, insure as named insured and additional named insureds, as the case may be, the Tower Owner and the Bustle Owner, together with such affiliates of such owners as any of them may designate from time to time, all as their interests may appear; (iii) shall provide, except for liability insurance

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described in Section 7.1.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 insureds' ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefitted by such endorsement or provision pays such increase; (iv) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all insureds thereunder; and (v) shall include a standard mortgagee endorsement or loss payable clause in favor of each of the holders of any mortgages in the Project in form satisfactory to it.

**Section 7.4 Copies of Policies.** Copies of all insurance policies, original certificates of insurance evidencing such policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner upon execution hereof and prior to the expiration date of any such expiring insurance policy.

**Section 7.5 Failure to Insure.** Should an Owner fail to provide and maintain any policy of insurance required under this Article 7 or pay its share of the premiums or other costs for any joint policies, then the 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 within ten (10) days after the Creditor Owner's written demand therefor.

**Section 7.6 Waiver of Claims.** Without limiting any release or waiver or liability or recovery contained elsewhere in the Agreement, each Owner for itself and each party claiming under, by or through such Owner, hereby waives all claims for recovery from the other Owner for any loss or damage to any of its property insured or required hereunder to be insured under valid and collectible insurance policies to the extent of any recovery collectible or which would have been collectible had such insurance required hereunder been obtained under such insurance policies plus any deductible amounts.

## ARTICLE 8 MAINTENANCE AND REPAIR; DAMAGE TO THE PROJECT

**Section 8.1 Maintenance.** Except as expressly provided hereinafter in this Article 8 in the event of fire or other casualty, the Tower Owner shall, at its sole cost and expense, Maintain the Tower Project and fixtures, equipment, appurtenances, Facilities and areas encumbered by Easements

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therein, and the Bustle Owner shall, at its sole cost and expense, Maintain the Bustle Project and fixtures, equipment, appurtenances, Facilities and areas encumbered by Easements therein, in each case in good and safe order and condition, and shall make all necessary repairs or replacements of, in, on, under, within, upon or about such property.

**Section 8.2 Replacement of Facilities.** An Owner obligated to perform Maintenance of Facilities shall, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better and providing substantially the same quality of service or better; provided, however, that the Bustle Owner will not be required to repair or replace any Facilities within the Bustle Project which are not required for the operation of the Tower Project, and the Tower Owner will not be required to repair or replace any Facilities within the Tower Project which are not required for the operation of the Bustle Project.

**Section 8.3 Damages to Project.** If the Project is damaged by fire or other casualty and (a) such damage occurs in, on, under, within, upon or about the Tower Project only, then the Tower Owner shall repair and restore such damage in a timely manner, or (b) such damage occurs in, on, under, within, upon or about the Bustle Project only, then the Bustle Owner will either (i) repair and restore such damage in a timely manner at the Bustle Owner's cost (using insurance proceeds therefor) or (ii) do each of the following (1) promptly deliver to the Tower Owner the Separation Notice stating that the Bustle Owner will commence the Separation Work as soon as reasonably possible subject to Unavoidable Delay and obtaining required governmental approvals, (2) diligently proceed to complete such Separation Work, and (3) promptly secure the damaged portions of the Bustle Improvements as required by law pending commencement of the Separation Work.

If the Project is damaged by fire or other casualty which does not fall into the categories set forth in the preceding grammatical paragraph (due to both the Bustle Project and the Tower Project being damaged thereby), then the repair or restoration of such damage shall be (A) the responsibility of the Tower Owner with respect to damage to the Tower Project, (B) the responsibility of the Bustle Owner with respect to damage to the Bustle Project, and (C) the joint responsibility of the Owners with respect to the common structures or other improvements separating the Tower Project and the Bustle Project; provided, however, that if the Bustle Owner (A) delivers a Separation Notice stating that the Bustle Owner will commence the Separation Work as soon as reasonably possible subject to Unavoidable Delay and obtaining required governmental approvals, (B) diligently proceeds to complete such Separation Work, and (C) secures the damaged portions of the Bustle Improvements as required by law pending commencement of the Separation Work, then the Bustle

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Owner will not be required to repair or restore any such damage to the Bustle Project but will be required to complete the Separation work.

**Section 8.4 Cost of Restoration.** If the cost and expense of performing any repair and restoration provided for in the second grammatical paragraph of Section 8.3 hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there are not insurance proceeds) shall be borne by the Owners in proportion to the cost and expense of repairing to their former condition their respective portions of the Project; provided, however, that to the extent such excess cost and expense results from the failure of any Owner to maintain the amount of insurance required under this Article 8, such Owner shall bear such portion of such excess cost and expense.

## ARTICLE 9 DEFAULT

**Section 9.1 Default Interest.** Any amounts due hereunder from one Owner to the other Owner shall, unless the time for such payment is specifically stated herein, be due ten (10) days after written notice. All amounts due hereunder from one Owner to the other Owner, if not paid within five (5) days after the date such amount becomes due and payable, shall bear interest at a rate per annum equal to the lesser of: (a) the floating rate which is equal to two percent (2%) in excess of the rate of interest from time to time announced by The First National Bank of Chicago at Chicago, Illinois, as its prime rate, reference rate or corporate base rate, or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a prime rate, reference rate or corporate base rate is not announced, and no maximum lawful rate applies, then an annual rate of ten percent (10%) shall be used for clause (a) above.

**Section 9.2 Remedies.** Upon the occurrence of a default by an Owner of its obligations hereunder and (except with respect to such defaults for which an alternative notice or cure period is expressly provided herein) the expiration of five (5) days after the giving of notice thereof by the other Owner, such other Owner may, subject to the limitations set forth in Article 10 with respect to Arbitrable Disputes, pursue any and all rights and remedies provided hereunder or available at law or in equity. The rights and remedies of an Owner provided for in this Article 9, subject to the limitations set forth in Article 12 and subject to the provisions of Article 10 with respect to Arbitrable Disputes, or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such



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Owner may be entitled at law or in equity or by statute. Each Owner shall have the right to enforce in a court of law the decision of the arbitrator of an Arbitrable Dispute, and may obtain and foreclose upon a judgment lien against the other Owner's interest in the Project to enforce the decision of the arbitrator. 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 Agreement. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

**Section 9.3 Separate Claims.** Each claim of any Owner arising under this Agreement shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

**Section 9.4 Attorneys' Fees.** 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 Agreement.

## ARTICLE 10 ARBITRATION

**Section 10.1 Disputes Subject to Arbitration.** Unless this Agreement specifically provides to the contrary, any dispute arising under this Agreement shall be resolved by arbitration under this Article (herein called an "Arbitrable Dispute"). Arbitration of any Arbitrable Dispute shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owner and by filing a copy of such demand with the American Arbitration Association (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.

**Section 10.2 Arbitrator.** Unless otherwise agreed to in writing by the parties to the arbitration, within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate one arbitrator to resolve the dispute. If the parties fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrator shall be experienced as to the design, construction and/or operation, as the Arbitrable Dispute requires, of

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structures similar to the Project. Except where contrary to the provisions set forth in this Agreement, the rules of the AAA for commercial arbitration shall apply to the arbitration of any Arbitrable Dispute. 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.

**Section 10.3 Hearings.** The arbitrator shall commence hearings within thirty (30) days of selection, unless the Owners or the arbitrator agree upon an expedited or delayed schedule of hearings. Prior to the hearings any Owner may send out requests to compel document production from the other Owner. Disputes concerning the scope of document production and endorsement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrator to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Arbitrable Dispute and to the extent that it is economical to do so considering the financial consequences of the Arbitrable Dispute. The arbitrator in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Agreement. 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 arbitrator may hear and determine the Arbitrable Dispute upon evidence produced by the appearing Owner. All arbitration costs shall be borne by the Owner which is the losing party in such arbitration, as determined by the arbitrator.

**Section 10.4 Continuation of Performance.** Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Agreement in accordance with this Agreement during the course of any arbitration constituted or conducted under the provisions of this Article 10. The obligation of the Owners to continue performance and make payments despite the existence of any arbitration hereunder shall be enforceable by any party to the Arbitrable Dispute 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 10.

**Section 10.5 Sole Remedy.** With respect to any Arbitrable Dispute, it is agreed that the arbitration provisions of this Article 10 shall be the sole remedy of the Owners under this Agreement. Notwithstanding any other provisions of this Agreement, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The

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foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 10 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Arbitrable Dispute 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 judgment thereon shall be entered by any court having jurisdiction.

## ARTICLE 11 UNAVOIDABLE DELAY

The Owners shall diligently perform their respective obligations set forth herein. No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, 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 ("Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Owner unable to perform (the "Non-Performing Owner") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within ten (10) days after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

## ARTICLE 12 CONDEMNATION

**Section 12.1 "Condemnation" Defined.** "Condemnation" means:

- A. The taking, either permanent or temporary, of the Project or the possession thereof under the power of eminent domain; or
- B. The voluntary sale (and only as hereinafter provided with the consent of each Owner) of all or any part of the Project to any entity having the power of eminent domain, provided that the Project (or any part thereof) is

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then under the threat of taking under the power of eminent domain.

**Section 12.2 Awards.** The Owners agree that any award, whether obtained by agreement prior to, during the pendency of, or after any court action, or by judgment, verdict or court action, resulting from the Condemnation of all or any portion of the Project, shall (a) if such Condemnation is with respect to only the Tower Project, be allocated entirely to the Tower Owner, or (b) if such Condemnation is with respect to only the Bustle Project, be allocated entirely to the Bustle Owner, or (c) if such Condemnation is of both the Bustle Project and Tower Project (or portions of each), be allocated in a manner and in such proportion as the Owners shall agree (failure to come to such an agreement shall be an Arbitrable Dispute).

**Section 12.3 Restriction of Easements and Common Facilities.** In the event of a Condemnation (other than a Condemnation which constitutes a substantial taking) of any common Facilities or any part of the Project which constitutes the servient estate for any Easement granted to the other Owner, then each Owner shall, to the extent of the Condemnation award attributable to the common Facilities or Easement condemned, repair, replace, restore or relocate such portion of the common Facilities or Easement on its portion of the Project as nearly as possible to the condition existing just prior to the Condemnation, using the Condemnation award and any additional amounts which the Owners desire to contribute.

## ARTICLE 13 LIMITATION ON LIABILITY

Notwithstanding anything in this Agreement to the contrary, no judgment or decree enforcing obligations under this Agreement against any Owner shall be subject to execution on, or be a lien on any assets of, such Owner other than that Owner's portion, estate or interest in the total Project or insurance or condemnation proceeds relating thereto.

## ARTICLE 14 ESTOPPEL CERTIFICATES

Each of the Owners shall, from time to time, within ten (10) days after receipt of written request from the other Owner, execute, acknowledge and deliver to such other Owner or to any existing or prospective purchaser or mortgagee designated by such other Owner, a certificate ("Estoppel Certificate") stating:

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

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(b) whether there is any existing default hereunder by the other Owner and, if so, specifying the nature and extent thereof;

(c) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted, or otherwise known by the Owner against the enforcement of the other Owner's obligations hereunder; and

(d) such other matters as may be reasonably requested.

## ARTICLE 15 EXPIRATION

**Section 15.1 Separation Work.** Pursuant to the Property Agreement, the Bustle Owner intends to demolish the Bustle Project and erect new improvements on the Bustle Land. In connection therewith, the Bustle Owner is obligated under the Property Agreement to perform the work described on Exhibit D attached hereto (the "Separation Work"). Pursuant to the Property Agreement and subject to the requirements set forth therein, the Bustle Owner is obligated to notify the Tower Owner in writing (the "Separation Notice") of the date on which the Bustle Owner intends to commence the Separation Work; the date on which the Bustle Owner intends to commence the Separation Work, as set forth in the Separation Notice, is referred to herein as the "Separation Work Commencement Date".

**Section 15.2 Expiration.** For purposes hereof, the "Separation Date" shall mean the first day of the first calendar month immediately following the date on which the Separation Work is substantially complete, as certified by Assignor's architect, pursuant to plans and specifications approved by the Tower Owner, subject only to punchlist items to be completed within thirty (30) days. Except as otherwise provided below in this Section 15.2, this Agreement, the Easements granted hereunder, and all rights and obligations of the Bustle Owner and the Tower Owner hereunder, shall, automatically and without further notice, expire, terminate, and be of no further force or effect on the Separation Date (and thereafter); provided, however, that (a) any and all rights and obligations of the Owners accruing or arising prior to the Separation Date shall survive the Separation Date, (b) the Parking Easement shall expire as provided in Section 3.5 hereof, (c) obligation of the Tower Owner to provide Services to Bustle shall expire on the Relocation Date, and the Bustle Owner shall be obligated to pay the amounts due under Section 5.3 only for the period beginning on the date of the closing of the Purchase Agreement and ending on the Relocation Date, and (d) the provisions of Section 16.2 hereof shall survive until the Tower Owner causes the Tower Project to be zoned separately from the Bustle Project (pursuant to the Property Agreement), at which

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time the provisions of such Section 16.2 shall automatically terminate.

**Section 15.3 Confirmation.** Without limiting the provisions of Section 15.2 above or the automatic termination provided therein, upon the expiration of this Agreement pursuant to Section 15.2 above and the payment by each Owner of amounts due hereunder to the other Owner accruing prior to the Separation Date, the Bustle Owner and Tower Owner shall, on or promptly after the Separation Date, enter into and record in the Office of the Cook County, Illinois Recorder, a confirmation of the termination of this Agreement in form reasonably acceptable to the parties.

## ARTICLE 16 ALTERATIONS, ZONING

### Section 16.1 Alterations.

A. Except with respect to the Separation Work and as otherwise expressly provided herein, any Owner (hereafter, an "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (such additions, improvements or alterations, excluding the Separation Work, are referred to herein as "Alterations") to such Altering Owner's portion of the Project.

B. No alterations shall be made without the prior written consent of the other Owner if such Alterations will:

(i) unreasonably diminish the benefits afforded to such other Owner by any Easement, or unreasonably interrupt such other Owner's use or enjoyment of any Easement,

(ii) materially degrade or diminish services to the other Owner under Article 5 hereof,

(iii) increase the costs or expenses for which any such other Owner is or would be responsible pursuant to Article 5 hereof, unless the Altering Owner agrees to pay all such increases in costs or expenses,

(iv) consist of drilling, coring, chipping, chopping or otherwise making any opening or hole into any primary structural concrete element, including floor slabs and beams or vertical column

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elements, which would violate the provisions of Article 4 hereof,

(v) materially increase the dimensions of the Tower Improvements or Bustle Improvements beyond the dimensions thereof existing as of the date of this Agreement.

**Section 16.2 Zoning.** The Tower Land and Bustle Land are now and shall continue to be combined and treated as one zoning lot for the purposes of complying with the zoning ordinance applicable to the Land.

**Section 16.3 Zoning Re: Alterations.** Neither Owner shall make any Alteration, allow any use of or undertake any other action relating to their respective portions of the Project which would violate the provisions of (a) the zoning ordinance applicable to the Project, (b) any health codes, building codes, fire codes or environmental and life safety regulations.

Applications for building permits to make Alterations which comply with the provisions of this Article shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owner. If joinder by the other Owner not making Alterations is so required, said Owner shall operate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner, from and against any and all loss, liability, claims, judgments, costs and expenses arising out of such other Owner's execution of the application, permit or other instrument. If any Owner fails to execute said application or instruments when required hereunder to do so, the Altering Owner is hereby irrevocably appointed attorney-in-fact of such Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such Owner.

**Section 16.4 Construction.** An Owner performing any Alterations or any work required as provided for under this Agreement shall include in any construction contract a provision pursuant to which the contractor recognizes the separate ownership of the Bustle Project and Tower Project and agrees (and requires each subcontractor and material supplier to agree) that any lien rights which the contractor or subcontractors or material suppliers have under the mechanics' lien laws of the State of Illinois shall only be enforceable against the portion of the Project owned by the Altering Owner.

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**Section 16.5 Bustle Construction.** Notwithstanding anything to the contrary contained herein, any and all rights of the Bustle Owner to use or access (for purposes of construction, staging, excavation, ingress and egress) any portion of the Tower Project for the performance of the Separation Work and the demolition of the existing Bustle Improvements and the construction of the New Bustle Improvements (as defined in the Property Agreement) shall be contained in the Property Agreement or documents entered into between the Bustle Owner and the Tower Owner pursuant thereto (excluding this Agreement), and none of the Easements or other rights granted to the Bustle Owner in this Agreement shall be used for such purposes.

## ARTICLE 17 NOTICES

All notices and other communications which any party is required or desires to send to another party shall be in writing and shall be sent by messenger, or registered or certified mail, postage prepaid, return receipt requested. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or the third business day after the date so mailed. Notices shall be addressed as follows:

If to the Bustle Owner: The Orchestral Association  
c/o LaSalle Partners Limited  
200 West Jackson  
26th Floor  
Chicago, Illinois 60606  
Attention: Jeffrey Greenberger

with a copy to:

Chicago Symphony Orchestral  
Association  
220 South Michigan Avenue  
8th floor  
Chicago, Illinois 60604  
Attention: Thomas W. Hallett  
Director of Finance

and a copy to:

Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603-3441  
Attention: R. K. Hagan

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If to the Tower Owner: The Equitable Life Assurance  
Society of the United States  
c/o Equitable Real Estate  
Investment Management, Inc.  
455 North Cityfront Plaza Drive  
Suite 2300  
Chicago, Illinois 60611  
Attention: Mr. Charles R. Beaver

with a copy to:

Katten Muchin & Zavis  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661-3593  
Attention: Ira J. Swidler

Any party hereto may change the names and addresses of the designee to whom notice shall be sent by giving written notice of such change to the other parties hereto in the same manner as all other notices are required to be delivered hereunder.

## ARTICLE 18 GENERAL

**Section 18.1 Severability.** The illegality, invalidity or unenforceability of any covenant, restriction, condition, limitation or any other provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the other provisions of this Agreement.

**Section 18.2 Headings.** The headings of Articles in this Agreement are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.

**Section 18.3 Amendment.** This Agreement may be amended or terminated only by an instrument signed by the Bustle Owner and the Tower Owner. Any amendment to or termination (excepting expiration of this Agreement pursuant hereto) of this Agreement shall be recorded with the Office of the Cook County, Illinois Recorder.

**Section 18.4 Definitions.** Terms used in this Agreement, unless elsewhere defined in this Agreement, shall have the meanings set forth in Article I hereto.

**Section 18.5 Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefited by

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such Easement states in writing its intention to abandon the Easement.

**Section 18.6 Run with Land.** Except as otherwise specifically set forth herein, all the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon the Owners and each subsequent holder of any interest in any portion of the Project and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Project or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees or mortgagees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents.

**Section 18.7 Governing Law.** The parties hereto acknowledge that this Agreement and all other instruments in connection herewith, have been negotiated, executed and delivered in the City of Chicago, County of Cook and State of Illinois. This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including, without limitation, matters affecting title to all real property described herein.

**Section 18.8 No Third Party Benefits.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

**Section 18.9 Recitals.** Each provision of the Recitals to this Agreement and each Exhibit attached hereto is hereby incorporated in this Agreement and is an integral part hereof.

**Section 18.10 Waiver.** No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver be in writing signed by the party making such waiver. The failure of any party subject hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

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**Section 18.11 Rule Against Perpetuities.** If and to the extent that any of the covenants, easements or other provisions of this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants, easements or other provisions may be valid, then the provision in question shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Robert P. Kennedy, former Attorney General of the United States, living at the date of this Agreement.

**Section 18.12 Additional Easements.** If it becomes clear that additional easements among the portions of the Project are necessary or desirable to effectuate the purposes of this Agreement, provided said proposed additional easements will not materially interfere with the use and occupancy of any portion of the Improvements, materially affect access to, or operation of, any portion of the Improvements, or materially increase the operating costs of, or create any additional expense for, any of the Owners, the Owners hereby reserve the right to determine, create and grant such additional easements as are necessary. In the event any such new easements are created, this Agreement and the Exhibits hereto shall be amended by designating and describing said easements and such amended Agreement shall be signed by the Owner, and the holders of any mortgages, if necessary, to effectuate the grant or creation of such additional easements, and shall be recorded with the Office of the Cook County, Illinois Recorder and shall have the same force, effect and priority as if such new easements were originally contained herein.

**Section 18.13 Consents Not Unreasonably Withheld.** All consents and approvals of any of the Owners shall not be unreasonably withheld or delayed. Any disapproval of or failure to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor.

**Section 18.14 Construction.** This Agreement shall not be construed more strictly against the Bustle Owner merely by virtue of the fact that the same has been prepared by the Bustle Owner's counsel, it being recognized that both of the parties hereto have contributed substantially and materially to the preparation and negotiation of this Agreement.

**Section 18.15 Time of Essence.** Time is of the essence for purposes of this Agreement.

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**Section 18.16 Counterparts.** This Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first set forth above.

THE BUSTLE OWNER:

THE TOWER OWNER:

THE ORCHESTRAL ASSOCIATION

THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES

By:

Name:

Title: Director of Finance

By:

Name:

Title: Investment Officer

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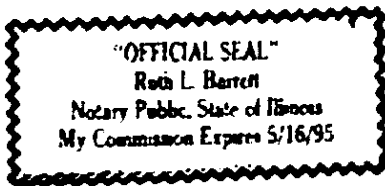
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## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On February 22, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom W. Hall, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President of The Orchestral Association, an Illinois not-for-profit association, the association that executed the within instrument, and acknowledged to me that such association executed the same.

Witness my hand and official seal.



Ruth L. Barrett  
Notary Public

Ruth L. Barrett  
(Name of Notary Typed/Printed)

May 16, 1995  
Expiration of Commission

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ACKNOWLEDGMENTS

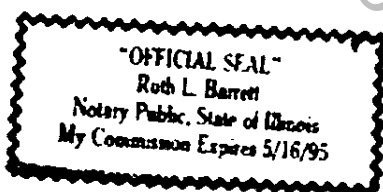
STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

On Feb 22, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Grunice, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice President of The Equitable Life Assurance Society of the United States, a New York corporation, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

Ruth L. Barrett  
Notary Public

Ruth L. Barrett  
(Name of Notary Typed/Printed)



May 16, 1995  
Expiration of Commission

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01/15/2010

01/15/2010

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## CONSENT OF MORTGAGEE

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, holder of each of the following:

MORTGAGE DATED JUNE 30, 1972 AND RECORDED JULY 21, 1972 AS DOCUMENT NUMBER 21985120 AND MODIFIED AS DOCUMENT 87667173 MADE BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 11, 1956 AND KNOWN AS TRUST NUMBER 11824, TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, TO SECURE AN INDEBTEDNESS OF \$6,280,000.00.

MORTGAGE DATED DECEMBER 10, 1987 AND RECORDED DECEMBER 21, 1987 AS DOCUMENT NUMBER 87667174 MADE BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO. AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 11, 1956 AND KNOWN AS TRUST NUMBER 11824, TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, TO SECURE AN INDEBTEDNESS OF \$17,000,000.00.

ASSIGNMENT OF LESSOR'S INTEREST IN CERTAIN LEASES DATED DECEMBER 10, 1987 AND RECORDED DECEMBER 21, 1987 AS DOCUMENT 87667175, MADE BY MICHIGAN ADAMS BUILDING COMPANY, TO THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES.

as the same have from time to time been amended, hereby consents to the execution and recording of the within Agreement, and agrees that the liens of each said mortgage and assignment of leases (as the case may be) is subordinate thereto.

IN WITNESS WHEREOF, the corporation has caused this instrument to be signed by its duly authorized officer on its behalf as of this 24 day of February, 1994.

THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES

By:

Its:

Stephen C. [Signature]  
[Signature]

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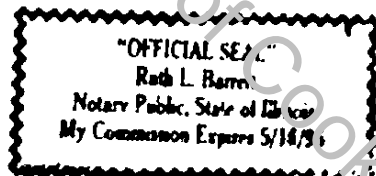
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STATE OF Ill. )  
COUNTY OF Cook ) SS.:

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that Stephen G. Gentry, a trust officer of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as such agent appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of February, 1994.

Ruth L. Barrett  
Notary Public



Ruth L. Barrett  
(Name of Notary Typed/Printed)

May 16, 1995  
Expiration of Commission

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

Christopher M. Vidovic, Esq.  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603

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## Exhibit A

### The Land

SUB-LOTS 1, 2, 3, 4, 5 AND 6 OF ASSESSOR'S DIVISION OF ORIGINAL LOTS 1 AND 4; ALSO THE STRIP OF LAND LYING SOUTH OF THE SOUTH LINE OF EAST ADAMS STREET, EAST OF SUB-LOT 4 AFORESAID, AND WEST OF SUB-LOTS 1, 2 AND 3 AFORESAID, ALL IN BLOCK 5 OF FRACTIONAL SECTION 15, ADDITION TO CHICAGO IN TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## Exhibit B

### The Tower Lard

SUB-LOTS 1, 2, 3, 4, 5 AND 6 OF ASSESSOR'S DIVISION OF ORIGINAL LOTS 1 AND 4; ALSO THE STRIP OF LAND LYING SOUTH OF THE SOUTH LINE OF EAST ADAMS STREET, EAST OF SUB-LOT 4 AFORESAID, AND WEST OF SUB-LOTS 1, 2 AND 3 AFORESAID, ALL IN BLOCK 5 OF FRACTIONAL SECTION 15, ADDITION TO CHICAGO IN TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BUT EXCLUDING THEREFROM THE FOLLOWING:

THAT PART OF SUB-LOT 6 IN THE ASSESSOR'S DIVISION OF ORIGINAL LOTS 1 AND 4 IN BLOCK 5 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SUB-LOT, 14.42 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SUB-LOT TO A POINT ON THE WEST LINE OF SAID SUB-LOT, 14.66 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SUB-LOT, IN COOK COUNTY, ILLINOIS.

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01/10/2010

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## Exhibit C

### The Bustle Land

THAT PART OF SUB-LOT 6 IN THE ASSESSOR'S DIVISION OF ORIGINAL LOTS 1 AND 4 IN BLOCK 5 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SUB-LOT, 14.42 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SUB-LOT TO A POINT ON THE WEST LINE OF SAID SUB-LOT, 14.66 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SUB-LOT, IN COOK COUNTY, ILLINOIS.

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## Exhibit D

### Separation Work

1. Relocation of bathrooms from first floor of Bustle Improvements to first floor of Tower Improvements.
2. Relocation of restaurant freezer from first floor of Bustle Improvements to first floor of Tower Improvements, if such freezer has material value and is not theretofore sold by the Tower Owner.
3. Erection or installation of temporary partitions (e.g., plywood, wallboard, plastic sheets) on the south side of the lower level and first two stories of the Tower Improvements as necessary to protect the south side of the lower level and first two stories of the Tower Improvements from the elements upon the first to occur of demolition of the Bustle Improvements and construction of the permanent walls described in item 4 below.
4. Construction of permanent walls or partitions on the south side of the lower level and first two stories of the Tower Improvements in order to seal off the south side of the lower level and first two stories of the Tower Improvements.
5. Construction of such improvements as may be necessary to permit the Bustle Owner to create (either contemporaneously with the Separation Work or in the future) an opening between the space occupied (as of the date hereof) by Tandy Corporation (d/b/a Radio Shack) and the new Bustle Improvements pursuant to the Property Agreement.
6. Disconnection and sealing off of all plumbing and utility lines between Tower Improvements and Bustle Improvements and relocation of the facilities within the Bustle Improvements (including the compressor) to the Tower Improvements, in each case to the extent necessary for the operation of the Tower Project.
7. All other work required to separate all existing Bustle Improvements from the Tower Improvements to enable the Tower Improvements to be a self-sufficient, self-contained operating building.

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