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COOK COUNTY RECORDER

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GROUND LEASE

FOR

REAL ESTATE PARCEL E-1

BETWEEN

COLE TAYLOR BANK, AS SUCCESSOR-TRUSTEE TO HARRIS  
TRUST AND SAVINGS BANK UNDER TRUST AGREEMENT DATED  
APRIL 29, 1991 AND KNOWN AS TRUST NO. 94707, LESSOR

AND

RKZ VENTURE GROUP, L.L.C., AN ILLINOIS  
LIMITED LIABILITY COMPANY, LESSEE

DATED: AS OF NOVEMBER 22, 1996

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## GROUND LEASE

### PREAMBLE

This Lease is dated as of November 22, 1996 ("Commencement Date"), and is between COLE TAYLOR BANK, not personally, but solely as successor-trustee to Harris Trust and Savings Bank under a trust agreement dated April 29, 1991 and known as Trust No. 94707 ("Lessor"), and RKZ Venture Group, L.L.C., an Illinois limited liability company ("Lessee").

WHEREAS, Lessor is the record owner of certain Premises (as defined in Section 2.73);

WHEREAS, Lessee desires to construct a first-class residential development on the Premises; and

WHEREAS, Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor on the terms and conditions herein set forth;

NOW, THEREFORE, it is agreed as follows:

### ARTICLE 1

#### Premises and Term

1.1 Premises; Term. In consideration of the Rent (hereinafter defined) to be paid and the terms, covenants, conditions, agreements and obligations to be performed and observed by Lessee as herein provided, Lessor does hereby demise and lease to Lessee, and Lessee does hereby take and hire, the following described premises ("Premises") consisting of that certain tract of vacant land located in the Village of Northbrook, Cook County, Illinois legally described on Exhibit A attached hereto and made a part hereof ("Land"), subject to the terms of this Lease and the title exceptions listed on Exhibit B attached hereto and made a part hereof and to any interests or acts of Lessee or anyone claiming or acting by, through or under Lessee, together with Lessor's right, title and interest, if any, in and to (i) all public or private infrastructure improvements which may now or hereafter be located thereon, (ii) all of Lessor's and Lessor's Beneficiary's interest in any private easements, rights of way or other improvements appurtenant thereto, (iii) all privileges, rights, easements, hereditaments, and appurtenances thereunto belonging, and (iv) all right, title and interest of Lessor and Lessor's Beneficiary in and to any streets, passages and other rights of way included therein or adjacent thereto (collectively, "Appurtenant Rights"), to have and to hold unto Lessee for and during a term commencing on the Commencement Date and expiring on December 31, 2148 ("Expiration Date"), unless sooner terminated on such date as may be provided in this Lease ("Termination Date"); provided, however, that if the length of the term of this Lease shall be held to be void or unenforceable for any reason whatsoever or shall be held to create any interest (including any fee interest or any interest in the form of an option to purchase the Premises) in Lessee other than the leasehold interest created hereby and the right of first opportunity granted hereby, by any judgment, final, unappealable order or decree of a court sitting at law or in equity and having jurisdiction over the Premises or by any statute, ordinance, regulation or other requirement of any Governmental Authority, then the parties hereto hereby agree that the term of this Lease shall

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automatically be established as ninety-nine (99) years subject to the option of Lessee, in Lessee's sole discretion, to extend the Lease for one additional term ending on December 31, 2148 without any act or the recording of any instrument on the part of Lessor or Lessee. Lessee shall be deemed to have executed its option to extend this Lease under this Section 1.1 unless Lessee shall have given written notice of its intent not to exercise its option to extend this lease to Lessor in the manner provided in Article 27 more than twelve (12) months before the end of the then-existing term of this Lease. Not later than the last Rent Readjustment Year, Lessor and Lessee will negotiate in good faith an extension of the term of this Lease and the amount of the Ground Rent for such extension period.

1.2 **Public Areas.** (a) Lessor does not demise to Lessee any space under, on or above the public roads and other public areas adjoining the Premises (collectively, "Environs"), but Lessor hereby grants to Lessee, during the term of this Lease and subject to all the provisions hereof, such rights to use such of the Environs as Lessor, and Lessor's Beneficiary, now or hereafter may own; and Lessee shall indemnify Lessor and Lessor's Beneficiary and save Lessor and Lessor's Beneficiary harmless from and against all claims by any public authority or any other party for compensation or damages by reason of the use or occupation of, or intrusion on, above or under the Environs by Lessee or anyone using, entering upon or occupying the Premises by, through or under Lessee.

(b) Lessor reserves unto itself, its successors and assigns, (i) all mineral rights below the surface of the Land and (ii) all air rights (including, without limitation, the right to proceeds from condemnation or eminent domain proceedings related to such rights) above a horizontal plane beginning at a height twenty-five feet above the maximum height of the tallest of the Building or Buildings or other structures permitted to be constructed by Lessee pursuant to this Lease. The foregoing reservation of rights shall not be construed to permit Lessor: (i) to build any structures or improvements of any type over any portion of the Land (whether or not occupied by buildings or other improvements) during the term of this Lease, or (ii) during the term hereof, to extract minerals from under the surface of the Land without Lessee's prior written consent, which consent shall not be withheld provided Lessee reasonably determines that the extraction of minerals by Lessor (including the processes related thereto and the installation or use of equipment used in connection therewith) will not materially interfere with or adversely affect Lessee's use of the Premises or the value of the Land, the Buildings or the Improvements taking into account, among other things, the marketability of Lessee's Buildings, insurance requirements, aesthetics, safety and such other factors as Lessee may reasonably consider.

1.3 **Delivery of Possession; Condition of Premises.** Lessor shall deliver possession of the Premises to Lessee on the Commencement Date, free of all interests of any third parties other than those interests disclosed on Exhibit B attached hereto and any interests or acts of Lessee or anyone claiming or acting by, through or under Lessee except that Lessee agrees that Lessor shall have the right to continue its farming activities on the Premises until notified by Lessee that Lessee has obtained all permits required for commencement of the Work. Except as otherwise stated in Article 30 of this Lease, Lessor has made no representation as to compliance with any Environmental Laws or as to the condition of the Premises. Lessee is familiar with the physical condition of the Premises and the Environs, and Lessee shall take possession of the Premises in an "as is" condition.

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## ARTICLE 2

### Definitions

2.1 "Additional Rent" shall mean any or all of the sums due and payable by Lessee or required to be reimbursed to Lessor under this Lease (other than Ground Rent payable pursuant to Section 3.1), including, but not limited to, any Impositions and any costs or expenses (including reasonable attorneys fees) incurred by Lessor in connection with the discharge or removal of any lien filed against Lessor's Estate or by reason of the non-payment by Lessee of any Imposition, tax, debt or other obligation for which Lessee is liable under this Lease. In addition, "Additional Rent" shall include any interest, penalties or other amounts payable by Lessee to third parties in connection with any of the foregoing and any interest payable to Lessor at the Lease Interest Rate in accordance with the provisions of this Lease.

2.2 "Affiliate" shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity. A person or entity shall be deemed to control another person or entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, general partnership or limited liability company interests, by contract or otherwise and shall include, with respect to any so-called "Illinois land trustee" that is at any time the Lessor or Lessee under this Lease, such land trustee's beneficiary and all persons or entities having the power of direction under such land trust, but shall not include any Leasehold Mortgagee, Unit Mortgagee or Fee Mortgagee.

2.3 "Annexation Agreement" shall mean that certain agreement between Lessor and the Village dated December 15, 1988, which was filed for record in the Office of the Recorder, Cook County, Illinois on December 16, 1988 as Document No. 88581879, together with any and all amendments thereto executed prior to the date of this Lease.

2.4 "Appraised Value" shall mean the fair market value of the Lessor's Estate or the estate created hereby, as the case may be determined from time to time as required pursuant to this Lease under the assumptions set forth in Section 21.4 and in the manner set forth in Article 21.

2.5 "Appraisal Review Period" shall have the meaning set forth in Section 21.1(b).

2.6 "Appurtenant Rights" shall have the meaning set forth in Section 1.1.

2.7 "Base Year" shall mean 1997 and each Rent Adjustment Year.

2.8 "Bona Fide Initial Sale" shall mean the initial sale of any Unit to any purchaser thereof who is not an Affiliate of Initial Lessee, a Leasehold Mortgagee or an Affiliate or successor interest of a Leasehold Mortgagee.

2.9 "Building" or "Buildings" shall mean a building or buildings within the first-class multi-building residential development comprised of 151 free-standing or attached, single-family residential units and duplex residential units and any clubhouse and other ancillary buildings to be

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constructed by Lessee on the Land as contemplated by the Development Agreement, together with any renewals or replacements thereof, additions thereto and substitutions therefor.

2.10 "Business Day" or "Business Days" shall mean a Day or Days other than a Saturday, Sunday or national banking holiday.

2.11 "By-Laws" shall have the meaning set forth in Section 6.1.

2.12 "Casualty" shall mean any event or occurrence resulting in loss or damage to any portion of the Premises, including, but not limited to, fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, collision with aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse, earthquake, war or public emergency, whether or not covered by insurance and regardless of the identity of the person or persons causing or otherwise responsible for the same.

2.13 "Changes and Alterations" or "Change or Alteration" shall have the meaning set forth in Section 13.1.

2.14 "Claim" or "Claims" shall have the meanings set forth in Section 15.1(a).

2.15 "Commencement Date" shall be the date set forth in the Preamble for the commencement of the term of this Lease.

2.16 "Common Area" shall mean all of the Premises except the Units, but including the Limited Common Area.

2.17 "Completion Date" shall mean the first to occur of (i) the first Day of the first month following closing on the last Bona Fide Initial Sale of a Unit (ii) the first Day of the first month following actual occupancy of all Units by any persons other than Initial Lessee (excluding up to six Units that may be used by Lessee as models for sale purposes) or (iii) January 1, 2000.

2.18 "Condemnation Proceeding" shall have the meaning set forth in Section 11.1.

2.19 "Condominium Act" shall mean the Illinois Condominium Property Act (765 ILCS 605/1 et seq. (1994)) as such act may be amended from time to time to the extent any such amendment would be binding on the parties hereto.

2.20 "Consumer Price Index" shall mean the Consumer Price Index U.S. City Averages for Urban Wage Earners and Clerical Workers, All Items (Base Index Year 1982-84=100) published from time to time by the United States Department of Labor, Bureau of Labor Statistics. If such index is changed so that the base year of such index changes, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. The Consumer Price Index for any calendar year shall be deemed to be the average of the monthly index figures stated in the Consumer Price Index for such calendar year. If the manner in which the Consumer Price Index is determined by the Bureau of Labor Statistics shall be substantially revised, other than a change in the base index year, an adjustment shall be made by Lessor and Lessee

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in such revised index which would produce results equivalent, as nearly as possible, to those which would have been obtained if such Consumer Price Index had not been so revised. If the Consumer Price Index becomes unavailable to the public because publication is discontinued, or otherwise, or if equivalent data is not readily available to enable Lessor and Lessee to make the adjustment referred to in the preceding sentence, then Lessor and Lessee will substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index is available, then a comparable index published by a university, a major bank or other financial institution or a comparable and recognized financial publication.

2.21 "Day" or "Days" shall mean a calendar day or days whether or not a Business Day or Business Days.

2.22 "Declaration" shall have the meaning set forth in Section 6.1.

2.23 "Default" shall have the meaning set forth in Section 18.1.

2.24 "Design Professional" and "Design Professionals" shall have the meaning set forth in Section 13.1(i).

2.25 "Development Agreement" shall have the meaning set forth in Section 5.1(a).

2.26 "Environmental Event" shall have the meaning set forth in Section 19.3(a).

2.27 "Environmental Laws" shall have the meaning set forth in Section 19.1.

2.28 "Environs" shall have the meaning set forth in Section 1.2.

2.29 "Event of Default" shall have the meaning set forth in Section 18.2.

2.30 "Expiration Date" shall have the meaning set forth in Section 1.1.

2.31 "Fee Mortgage" shall have the meaning set forth in Section 10.3.

2.32 "Fee Mortgagee" shall mean the holder or holders at any time or from time to time of the note evidencing the debt and other obligations secured by any Fee Mortgage.

2.33 "First Fee Mortgage" shall mean, when there is more than one Fee Mortgage, the Fee Mortgage that is a first mortgage lien on Lessor's Estate in the Premises or, if there is only one Fee Mortgage, then that Fee Mortgage.

2.34 "First Fee Mortgagee" shall mean the holder or holders at any time or from time to time of the note or other documents evidencing the debt and other obligations secured by any First Fee Mortgage.

2.35 "First Leasehold Mortgage" shall mean, when there is more than one Leasehold Mortgage, the Leasehold Mortgage that is a first mortgage lien on Lessee's interest hereunder and the

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leasehold estate created hereby or, if there is only one Leasehold Mortgage, then that Leasehold Mortgage.

2.36 "First Leasehold Mortgagee" shall mean the holder or holders at any time or from time to time of the note or other documents evidencing the debt and other obligations secured by any First Leasehold Mortgage.

2.37 "First Notice" shall have the meaning set forth in Section 21.1(a).

2.38 "First Party" shall have the meaning set forth in Section 21.1(a).

2.39 "Full Insurable Value" shall mean the actual replacement cost (excluding, as to the insurance required pursuant to Section 8.1(a) and Section 8.1(b), foundation and excavation costs), as determined, at the request of Lessor, not more frequently than at three-year intervals, by an architect, engineer, contractor, appraiser, appraisal company, or insurance company; selected and paid by Lessee, and approved by Lessor, which approval shall not be unreasonably withheld.

2.40 "Governmental Authority" or "Governmental Authorities" shall have the meaning set forth in Section 7.2(a).

2.41 "Government Requirements" shall have the meaning set forth in clause (i) of Section 7.3(a).

2.42 "Ground Rent" shall mean the basic periodic amounts payable by Lessee to Lessor pursuant to Section 3.1.

2.43 "Hazardous Substances" shall mean and include (a) any friable asbestos or asbestos-containing material, polychlorinated biphenyls, dioxins or urea formaldehyde foam insulation; (b) any petroleum or petroleum-derived products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) any Environmental Laws; and (d) any waste substance, material, pollutant or contaminant, the presence, disposal, release or threatened release of which on, onto or from any premises (including the Premises and the Land), is or would constitute an Environmental Event or is governed by any applicable Environmental Laws.

2.44 "Homeowners Association" shall have the meaning set forth in Section 6.1.

2.45 "Imposition" or "Impositions" shall have the meanings set forth in Section 4.1(a).

2.46 "Improvements" shall have the meaning set forth in of the Development Agreement.

2.47 "Indemnitee" shall have the meaning set forth in Section 15.3.

2.48 "Indemnitor" shall have the meaning set forth in Section 15.3.

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2.49 "Initial Lessee" shall mean RKZ Venture Group, L.L.C., an Illinois limited liability company, and any Affiliate or permitted assignee of Initial Lessee to which Initial Lessee's interest in this Lease as the Initial Lease is assigned.

2.50 "Insurance Trustee" shall have the meaning set forth in Section 8.7.

2.51 "Land" shall have the meaning set forth in Section 1.1.

2.52 "Lease" shall mean this instrument executed by Lessor and Lessee, as the same may hereafter be supplemented or amended.

2.53 "Lease Interest Rate" shall mean (i) 3% plus the rate announced from time to time by First Chicago Bank-The First National Bank of Chicago as its "corporate base rate," "prime rate," "reference rate" or other similar rate and in effect on the date interest first begins to accrue with respect to any sum that becomes payable pursuant to any provision or provisions of this Lease, or (ii) in the event such bank has ceased announcing any such rate, then such rate as may be announced by Harris Trust and Savings Bank as its "prime rate" "reference rate" or other similar rate plus 3%, or (iii) if both such banks shall cease announcing any such rate, then the rate of interest on 90-day Treasury Bills issued by the United States government having an issue date as near as may be practicable to and preceding such date plus 5.5%, unless prohibited by law, in which case "Lease Interest Rate" shall mean the maximum contract rate permitted by law at such time, but in no event shall such rate be greater than 22%.

2.54 "Lease Year" shall mean a calendar year, provided that the first and last Lease Years may be portions of a calendar year. The first Lease Year shall end on December 31, 1997.

2.55 "Leasehold Mortgage" shall have the meaning set forth in Section 10.2(a) and shall include only a Leasehold Mortgage with respect to which the requirements of Section 10.2(b) have been met.

2.56 "Leasehold Mortgagee" shall mean the holder or holders from time to time of any note or other documents evidencing the debt and other obligations secured by any Leasehold Mortgage.

2.57 "Lessee" shall mean, initially, Initial Lessee, each and every assignee or transferee of Lessee's interest under this Lease permitted pursuant to Article 6 and Section 10.1 and any New Lessee. In addition, for all purposes under this Lease (except the applicability of Section 10.1(a) and except as otherwise set forth in Section 10.1(b)), Lessee shall also include any Leasehold Mortgagee, Unit Mortgagee or other purchaser, assignee or transferee who acquires Lessee's interest in and to this Lease and of the leasehold estate created hereby in any proceedings for the foreclosure of any Leasehold Mortgage or any Unit Mortgage, or pursuant to any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage or any Unit Mortgage. The Lessee under this Lease with respect to any portion of the Premises subject to the Declaration at any time shall mean, collectively, the Unit Owners and the Homeowners Association, acting solely by and through the Homeowners Association pursuant to Article 6.

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2.58 "Lessor" shall include the named Lessor identified in the Preamble, each and every assignee or transferee of Lessor's interests hereunder or of Lessor's Estate and any Successor-Lessor.

2.59 "Lessor's Beneficiary" shall mean (i) as of the date hereof the Society of the Divine Word, an Illinois not-for-profit corporation, being the sole beneficiary of Cole Taylor Bank Trust No. 94707, or (ii) from time to time after the date hereof, each and every person or entity that is an assignee or transferee of the initial Lessor's Beneficiary's interest or any part thereof hereunder permitted pursuant to this Lease and each and every person or entity that is at any time or from time to time the beneficiary of any Lessor that is a so-called "Illinois land trust", but determined only as of the date as of which a particular determination under the various provisions of this Lease is then being made or is then required to be made under the provisions of this Lease as to the identity of the Lessor's Beneficiary or Beneficiaries.

2.60 "Lessor's Estate" shall mean Lessor's or Lessor's Beneficiary's fee simple right, title and interest in and to the Premises including Lessor's or Lessor's Beneficiary's reversionary interest or estate in or title to the Premises, the Building and the Improvements.

2.61 "Lessor's Termination Notice" shall have the meaning set forth in Section 28.4(a).

2.62 "Limited Common Area" shall have the meaning set forth in the Declaration.

2.63 "Major Change" shall have the meaning set forth in Section 13.1(b).

2.64 "Mortgage" shall mean any instrument (including any instrument in the nature of an indenture, mortgage, deed of trust, collateral assignment of beneficial interest in a land trust or other similar instrument) creating a lien as security for any debt or giving rise (absent a waiver) to a right of redemption of any interest identified under this Lease including, without limitation, any lien on Lessor's Estate, on Lessee's interest hereunder, on any Unit Owner's leasehold estate, or on the leasehold estate created hereby exercisable upon the occurrence of a default in the repayment of any debt), and any supplement thereto or any renewal, modification, consolidation, replacement or extension thereof.

2.65 "New Lease" shall have the meaning set forth in Section 28.4(a).

2.66 "New Lease Request" shall have the meaning set forth in Section 28.4(a).

2.67 "New Lessee" shall have the meaning set forth in Section 28.4(a).

2.68 "Notice of Claim" shall have the meaning set forth in Section 15.2.

2.69 "Notice of Potential Claim" shall have the meaning set forth in Section 15.2.

2.70 "On-Site Improvements" shall have the meaning set forth in Section 7(a) of the Annexation Agreement.

2.71 "Possession Date" shall have the meaning set forth in Section 18.3(c).

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- 2.72 "Potential Claim" shall have the meaning set forth in Section 15.2.
- 2.73 "Premises" shall include the Land, the Appurtenant Rights and all interests therein and elements thereof described in Section 1.1 that are demised to Lessee pursuant to this Lease.
- 2.74 "Project" shall mean the Buildings and the Improvements.
- 2.75 "Protected Persons" shall mean any or all of Lessor's, Lessee's, or Lessor's Beneficiary's, as the context so requires, respective members, managers, partners, officers, directors, employees, advisors, attorneys, consultants and Affiliates, and with respect to Lessee only, shall include also the Homeowners Association and the Unit Owners and, as the context so requires, such parties' respective members, managers, partners, officers, directors, employees, advisors, attorneys, consultants and Affiliates.
- 2.76 "Public Improvements" shall have the meaning set forth in Section 7(a) of the Annexation Agreement.
- 2.77 "Remediation" shall mean cleanup activity or other remedial action required by any Environmental Laws or any applicable Governmental Authorities under any Environmental Laws.
- 2.78 "Rent" shall be deemed to include all Ground Rent, and any adjustments or modifications thereto in accordance with the provisions of this Lease and all Additional Rent payable by Lessee to Lessor under this Lease.
- 2.79 "Rent Adjustment Year" shall mean 2028, 2053, 2078, 2103 and 2128.
- 2.80 "Rent Reserve" shall have the meaning set forth in Section 6.1(b).
- 2.81 "Residential Project" shall mean that portion of the Project and the Premises subject, at any time, to the jurisdiction of the Declaration in accordance with Articles 2 and 4 of the Declaration.
- 2.82 "Restoration" shall mean any and all work necessary to repair any damage to the Project or the Premises as nearly as possible to the same value, condition and character as existed immediately prior to any loss due to Casualty or any taking in any Condemnation Proceeding, as the case may be, lien-free and ready for use.
- 2.83 "Rules" shall have the meaning set forth in Section 20.4.
- 2.84 "Second Party" shall have the meaning set forth in Section 21.1.
- 2.85 "Security" shall have the meaning set forth in Section 4.5.
- 2.86 "Successor-Lessor" shall have the meaning set forth in Section 22.2.
- 2.87 "Termination Date" shall have the meaning set forth in Section 1.1.

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2.88 "Termination Notice" shall have the meaning set forth in Section 12.2(a).

2.89 "Transportation Agreement" shall mean that certain Transportation Facilities and Programs Agreement dated June 30, 1989, which was filed for record in the Office of the Recorder, Cook County, Illinois on July 7, 1989 as Document No. 89309243, together with any and all amendments thereto executed prior to the date hereof, pursuant to which Lessor, Rubloff Inc. and the Village have undertaken certain obligations and have agreed to certain traffic impact fees and other requirements that shall be applicable to the Premises and other surrounding properties, as more fully described therein.

2.90 "Transportation Impact Fees" shall have the meaning set forth in Section 3(a) of the Transportation Agreement.

2.91 "Third Appraiser" shall have the meaning set forth in Section 21.1(b).

2.92 "Trust Account" shall have the meaning set forth in Section 6.2(c).

2.93 "Unavoidable Delays" shall mean delays due to strikes, lock-outs, acts of God, inability to obtain materials or commercially reasonable substitutes for such materials, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or similar causes, provided such similar causes are beyond the reasonable control of Lessee or Lessor, as the case may be, and with respect to Lessee shall also include any delay arising out of Lessor's failure to take any action required by the terms of this Lease to be taken by Lessor within the time period or periods specified hereunder for such action.

2.94 "Unit" shall mean that portion of a Building permitted to be used as a residence by the Unit Owner thereof in accordance with the zoning requirements of the Village which is part of the Residential Project, all as more fully described in the Declaration.

2.95 "Unit Lease" or "Unit Leases" shall mean the assignment of lease document that creates an individual Unit Owner's fractional interest in this Lease permitted pursuant to Article 6.

2.96 "Unit Mortgage" shall have the meaning set forth in Section 6.4(b).

2.97 "Unit Mortgagee" shall mean the holder or holders from time to time of any note or other documents evidencing the debt and other obligations secured by any Unit mortgage.

2.98 "Unit Owner" or "Unit Owners" shall have the meanings set forth in Section 6.4(a), and shall include the Initial Lessee with respect to any Units owned by the Initial Lessee that are part of the Residential Project.

2.99 "Village" shall mean the Village of Northbrook, Illinois, a municipal corporation, or any successor or successors to such village having the rights and obligations referred to herein and in the Annexation Agreement and the Transportation Agreement.

2.100 "Work" shall have the meaning set forth in the Development Agreement.

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## ARTICLE 3

### Rent Payments

3.1 Ground Rent. (a) Lessee shall pay to Lessor ground rent ("Ground Rent") commencing on the Commencement Date. Ground Rent shall be determined in the following manner:

(i) Ground Rent from the Commencement Date through the end of the first Lease Year shall be at the rate of Four Hundred Four Thousand Two Hundred Fifty and 00/100 Dollars (\$404,250.00) per annum;

(ii) Ground Rent for each Lease Year which is not a Rent Adjustment Year shall be one hundred one percent (101%) of the Ground Rent for the immediately preceding Lease Year; and

(iii) Ground Rent for any Rent Adjustment Year shall be an amount agreed to by Lessor and Lessee prior to the commencement of such Rent Adjustment Year or, in the absence of such agreement, an amount per year equal to six and sixty-five one hundredths percent (6.65%)<sup>1</sup> of the Appraised Value of the Land determined as of the first Day of such Rent Adjustment Year in accordance with the provisions of Article 21; provided, that notwithstanding anything to the contrary contained in this Lease, the amount of the Ground Rent for any Rent Adjustment Year shall not exceed an amount equal to the sum of (A) the Ground Rent for the most recent Base Year plus (B) the product of (x) the Ground Rent for the most recent Base Year multiplied by (y) a fraction, the numerator of which is 1.5 times the amount, if any, by which the Consumer Price Index for the calendar year immediately preceding such Rent Adjustment Year exceeds the Consumer Price Index for the calendar year immediately preceding the most recent Base Year, and the denominator of which is the Consumer Price Index for the calendar year immediately preceding the most recent Base Year. For purposes of this Section 3.1(a)(iii), the calendar year immediately preceding the first Base Year shall be 1996. Notwithstanding the foregoing, until Ground Rent for any Rent Adjustment Year is determined in accordance with the immediately preceding sentence, Ground Rent for such Rent Adjustment Year shall be equal to the Ground Rent for the most recent Lease Year.

(b) Ground Rent shall be payable in monthly installments on the tenth (10th) Day of each month during the term of the Lease.

(c) Notwithstanding anything herein to the contrary, Lessee's obligation to pay to Lessor the full Ground Rent shall not commence until the first Day of the calendar month immediately following the Completion Date. Prior to the Completion Date, Lessee shall pay monthly installments of Ground Rent in an amount equal to one-twelfth (1/12) of the then applicable Ground Rent multiplied by

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<sup>1</sup> For information only: 6.65% is derived by applying a 9½% rate of return to 70% of the Appraised Value of the Land.

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a quotient, the numerator of which is the number of Units for which Initial Lessee has closed Bona Fide Initial Sales or which are actually occupied by any persons other than Initial Lessee (excluding not more than six Units that may be used by Initial Lessee as models for sales purposes), determined as of the last Day of the preceding month, and the denominator of which is one hundred fifty-one (151); provided, however, that in no event shall the numerator of the quotient be less than the following:

- (i) after January 1, 1998, fifty (50);
- (ii) after January 1, 1999, one-hundred (100); and
- (iii) after January 1, 2000, one-hundred fifty-one (151).

(d) Initial Lessee agrees diligently to pursue retail sales of each Unit when and as such units are from time to time substantially completed. Initial Lessee will provide Lessor with copies of documents, satisfactory to Lessor in Lessor's sole discretion, evidencing such sales promptly after such sales are completed. Each monthly payment of Ground Rent payable prior to the Completion Date shall be accompanied by a sworn statement signed by Initial Lessee identifying all Units within the Building or Buildings that have been sold or are occupied by any persons other than Initial Lessee and the date on which such sale occurred or such occupancy commenced, in sufficient detail to allow Lessor to determine whether or not Lessee is in compliance with this Section 3.1. Initial Lessee's failure to provide Lessor with the documents and statements required by this Section 3.1(d) shall not relieve Lessee of its obligation to make those payments required pursuant to this Section 3.1.

(e) Notwithstanding anything to the contrary contained in this Lease, from and after the date of the closing on the first Bona Fide Initial Sale of a Unit, each Unit Owner (other than Initial Lessee) shall pay monthly installments of Ground Rent in an amount equal to one-twelfth (1/12) of one hundred fifty first (1/151) of the then applicable Ground Rent pursuant to Section 3.1(a) (without taking into account or applying the provisions of Section 3.1(c)), and Initial Lessee shall pay monthly installments of Ground Rent in an amount equal to one-twelfth (1/12) of the balance of the then applicable Ground Rent (after taking into account and applying the provisions of Section 3.1(c) and then subtracting the amount of Ground Rent due from the Unit Owners other than Initial Lessee), if any, due under this Lease. All Ground Rent to be paid by the Unit Owners shall be paid to, and collected by, the Homeowners Association as part of assessments, and shall be paid to Lessor by the Homeowners Association and the Homeowners Association shall be liable for paying to Lessor all Ground Rent due from the Unit Owners under this Lease.

**3.2 Place and Time of Payment.** (a) All Rent and other sums due Lessor hereunder shall be paid in lawful money of the United States of America (i) by, at Lessee's sole option, either (1) a check payable to Divine Word Techny Community or (2) wire transfer to The Northern Trust Company-Chicago, ABA #071000152, Trust Division Account #30283380, c/o Religious Communities Trust, at Account Name: Divine Word Community, RCT Account #3014-003-001 preceded by a telephone call before noon of the Business Day prior to such transfer to either Lessor's Beneficiary's House Treasurer (or to such other person as Lessor may from time to time designate) at (847) 272-2700 notifying such officer of the name of the bank originating the wire transfer, the amount transferred and the date of transfer or (ii) at such other place or in such other manner as may be agreed to by Lessor and Lessee; provided, however, Lessor may not require Lessee to make payments by wire transfer (unless such

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method of payment is then usual and customary for payment of ground rent commensurate with the amount to be paid under this Lease).

(b) Each monthly installment of Ground Rent shall be paid on the tenth (10th) Day of the month for which such installment is due. From and after the closing on the first Bona Fide Initial Sale of a Unit, the Homeowners Association shall be solely responsible for the collection and payment to Lessor of all Ground Rent due from Unit Owners and the Homeowners Association shall be liable for paying to Lessor all Ground Rent due from the Unit Owners under this Lease.

(c) The Rent payable under this Lease shall be paid to Lessor without notice or demand and without abatement, deduction or setoff for any reason whatsoever (except as otherwise expressly provided in this Lease), and Lessee's obligation to pay Rent that shall have accrued during the term hereof but remains unpaid shall survive the Expiration Date or the Termination Date, as the case may be.

**3.3 Interest on Overdue Payments.** All Rent and other sums due Lessor hereunder not paid when due shall bear interest at the Lease Interest Rate from the date which is five Business Days after the date when due to the date of receipt thereof by Lessor without in any way limiting or modifying Lessor's other rights and remedies under this Lease arising by reason of a failure to pay such sums when due or by reason of any other Event of Default or Default.

**3.4 Other Costs, Expenses and Obligations.** The Ground Rent required to be paid to Lessor under this Lease shall be net to Lessor in each Lease Year or portion thereof during the term of this Lease, and Lessee shall pay all costs and expenses and perform all obligations of every kind relating to the Premises and the Building or Improvements that may arise or become due during the term of this Lease, including, but not limited to, (i) all Impositions, (ii) all charges for gas, electricity, light, heat, power, telephone and other utilities and services, (iii) all assessments, general or special, that may be assessed by the Homeowners Association or any other property owners association or other similar association to which the Land or the leasehold interest created hereby is subject, and (iv) all Transportation Impact Fees and other fees required to be paid pursuant to the Annexation Agreement when and as required by the Transportation Agreement and Annexation Agreement, but only to the extent such fees are required to be paid in connection with the development of the Premises; but specifically excluding from such costs and expenses any taxes described in Section 4.2. Lessee shall indemnify Lessor from and hold Lessor harmless against all such charges, costs, expenses and obligations. In addition, Lessee shall, at its sole cost and expense, procure any and all necessary permits, licenses or other authorizations required for the lawful and proper construction and operation of the Buildings and Improvements on the Premises and for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service or utility described herein to, in or upon the Premises.

**3.5 Mutual Cooperation.** Lessor and Lessee shall do all things necessary or appropriate to carry out the terms and provisions of this Lease and to aid and assist each other in carrying out the terms and objectives of this Lease and the intentions of Lessor and Lessee as reflected by said terms, including, without limitation, the giving of such notices, seeking the holding of, and participating in, such public hearings, seeking and securing the enactment by the Village of such resolutions and ordinances and the taking of such other actions as may be necessary to enable Lessor's and Lessee's

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compliance with the terms and provisions of this Lease and as may be necessary to give effect to the terms and objectives of this Lease and the intentions of Lessor and Lessee as reflected by said terms.

## ARTICLE 4

### Impositions

4.1 **Impositions.** In addition to Ground Rent and as Additional Rent hereunder, until such time as the Declaration becomes effective and taxes are assessed on the individual Units (after which time the Unit Owners and/or the Homeowners Association shall pay any Impositions (as defined below) with respect to the Residential Project in accordance with the Declaration and Initial Lessee shall pay any Impositions with respect to that portion of the Premises not part of the Residential Project), Initial Lessee shall pay when due, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, any and all taxes, assessments, water and sewer rates and charges, and all occupancy taxes, leasing taxes, rent taxes or similar taxes (whether or not imposed on or measured by all or any portion of the Rent paid or payable by Lessee), and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever including, but not limited to, assessments for public improvements or benefits, that at any time prior to or during the term of this Lease may have been or may be assessed, levied or imposed upon or become a lien upon or with respect to all or any portion of the Premises, whether or not payable during the term of this Lease and any and all taxes imposed on Lessor that are, in whole or in part, in substitution for or in lieu of any of the foregoing taxes (all of which are collectively referred to herein as "Impositions" or any one of which is individually referred to herein as an "Imposition"); provided, however, that if, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee shall or may elect, as the case may be, to pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest; and provided, further, that any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease, and a part of which is included in a period of time either after the Expiration Date or prior to the Commencement Date, shall be adjusted as between Lessor and Lessee as of the Expiration Date or the Commencement Date, as the case may be (whether or not, during the term of this Lease, such Imposition shall be assessed, levied, or imposed upon or become due and payable and a lien upon the Premises or the Building or any part thereof), in order that Lessor shall pay that proportion of such Imposition which the part of such fiscal period included in the period of time after the Expiration Date or prior to the Commencement Date, as the case may be, bears to such fiscal period, and Lessee shall pay the remainder thereof. Notwithstanding the foregoing, from and after the date of recording of the Declaration, the Unit Owners and the Homeowners Association shall be responsible for any Impositions (or portion thereof) allocable to the Residential Project, whether or not taxes are assessed on the individual Units and Initial Lessee shall be responsible for any Impositions (or portion thereof) allocable to that portion of the Premises not part of the Residential Project. With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments thereof that become due and payable prior to the Commencement Date and

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subsequent to the Expiration Date, and Lessee shall pay those installments that become due and payable after the Commencement Date and prior to the Expiration Date.

4.2 **Lessor's Taxes.** Nothing contained in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax imposed on Lessor, or any income, excess profits or revenue tax imposed on Lessor or Lessor's Beneficiary, except that Lessee shall pay (a) any such tax which is, in whole or in part, in substitution for or in lieu of any other Imposition which Lessee is obligated to pay under Section 4.1, and (b) any rent tax described in Section 4.8 which is not, in whole or in part, in substitution for, or in lieu of any tax which Lessor is obligated to pay pursuant to this Section 4.2.

4.3 **Proof of Payment.** Initial Lessee shall furnish to Lessor, within thirty days after the due date of any Impositions for which Initial Lessee is obligated to pay pursuant to this Lease, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to Lessor, evidencing the payment of such Imposition. The Homeowners Association shall furnish to Lessor, within thirty Days after the due date of any Imposition with respect to the Common Area, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to Lessor, evidencing the payment of such Imposition. If, but only if, the failure by any Unit Owner or other person responsible for the payment of any Impositions on any Unit would give rise to a lien on Lessor's Estate, then the Homeowners Association also shall furnish to Lessor, within thirty Days after the due date of such Impositions, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to Lessor, evidencing the payment of such Impositions. The bill, certificate or advice of the non-payment of any such Imposition made or issued by the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such bill, certificate or advice.

4.4 **Notices of Impositions.** Lessor shall send to Lessee, within thirty Days of Lessor's receipt thereof but not later than the due date thereof, copies of any notices of Impositions (and notices of assessment and any other information concerning Impositions) received by Lessor from any Governmental Authority; provided, however, that Lessor's failure to send any such notice to Lessee shall not relieve Lessee from any obligation hereunder if Lessee has actual notice of such Imposition or if Lessee is not materially damaged or prejudiced by such failure.

4.5 **Right to Contest Impositions.** Initial Lessee (until taxes are levied separately on the individual Units and after such time with respect to all portions of the Premises not part of the Residential Project) or the Homeowners Association (with respect to the Residential Project from and after such time as taxes are levied separately on the individual Units), as applicable, shall have the right to contest the amount or validity of any Imposition by appropriate legal proceedings; provided, however, that this right shall not be deemed or construed in any way to relieve, modify or extend Lessee's obligation to pay any Imposition at the time and in the manner provided in this Article 4, unless (a) the legal proceedings shall operate to prevent the sale of the Premises or any part thereof and the foreclosure of any lien thereon to satisfy such Imposition prior to the final determination of such proceedings, and (b) Lessee shall at all times during the pendency of such proceedings keep on deposit with Lessor, or such person or corporation as Lessor may direct in writing or as may be provided by law, as security for the payment of such Imposition, a sum of money, a surety bond issued by an insurance company acceptable to Lessor or such other security as may be reasonably satisfactory to Lessor ("Security"), in any such

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case in an amount (calculated as of the date as of which any determination is made under this Section 4.5) at least equal to 110% of the sum of (i) the amount of such Imposition, (ii) all interest and penalties payable in connection therewith, and (iii) all charges that may or might be assessed against or become a charge on the Premises or the Building or any part thereof in said legal proceedings or, in lieu of providing such Security, Lessee shall provide Lessor with a guaranty, in form satisfactory to Lessor by Lessee or any other third party reasonably approved by Lessor as to financial capability. Any such Security or guaranty shall hold Lessor and the Premises harmless from any damage arising out of the proceeding and shall assure the payment of any judgment. Any Security so deposited and any monies realized under any bond deposited as Security hereunder shall be deemed to be held by the recipient for the uses and purposes prescribed by this Lease. Upon the termination of such legal proceedings, any Security so deposited or realized shall be applied to the interest and penalties in connection therewith to the payment, removal and discharge of the Imposition, if any, then payable, and to the charges accruing in such legal proceedings, in that order, and the balance, if any, shall, except as otherwise provided in Section 14.3, be paid or returned to Lessee. In the event that the Security shall be insufficient for this purpose, Lessee shall forthwith pay over to the person holding the Security hereunder an amount of money sufficient, when added to the Security so deposited pursuant to this Section 4.5, to pay the same. In the event of any Event of Default by Lessee under this Lease, Lessor or any other person then holding any Security under this Section 4.5 upon a demand by Lessor is authorized to realize on the Security and apply all or part of the proceeds of such Security to pay such Imposition, or to apply any such Security on account of such Event of Default, or both, as determined by Lessor in its sole discretion. Notwithstanding the foregoing, so long as any Leasehold Mortgagee holds the Security required to be deposited by Lessee hereunder, such Security shall not be required to be deposited with Lessor provided such Leasehold Mortgagee agrees in writing with Lessor not to release such Security until the Imposition has been paid or otherwise discharged in full.

4.6 **Notice of Intent to Contest; Costs.** Lessee shall promptly notify Lessor of its intent to contest any Imposition. Lessor shall not be required to join in any proceeding therefor, unless it shall be necessary for Lessor to do so in order properly to prosecute such proceeding and Lessor shall have been fully indemnified to its reasonable satisfaction against all costs and expenses, including attorneys fees, in connection therewith. Lessor shall not be subjected to any liability for the payment of any costs or expenses, including attorneys fees, in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save Lessor harmless from and against any such loss, costs or expenses.

4.7 **Tax Parcel Divisions.** If, at the time of the filing of the Declaration, a division or consolidation of tax parcel permanent index numbers is required or deemed advisable by Lessor, Lessor shall file the necessary petitions, applications or other instruments with the applicable Governmental Authority and Lessee shall cooperate in good faith in filing or making any petitions, applications or other instruments necessary to effect such division or consolidation. In connection therewith, Lessee shall make available to Lessor, at Lessee's expense, copies of any surveys of the Land or any other land included within any tax parcel permanent index number to be divided that are in Lessee's possession or available to Lessee for purposes of such petition or application. In the event Lessor does not so elect, Lessee shall file any and all such petitions or applications and Lessor shall cooperate in good faith with Lessee in connection therewith.

4.8 **Rent Tax.** If, at any time during the term of this Lease, under the laws of the State of Illinois or any political subdivision thereof in which the Premises are situated, a tax or excise

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on rents or other tax, however described, is levied or assessed by said State or political subdivision against Lessor or upon the receipt of rent, Lessee or the Homeowners Association, as applicable, shall pay and discharge such tax or excise on rents or other tax but only (a) to the extent of the amount thereof which is lawfully assessed or imposed upon Lessor and that was so assessed or imposed as a direct result of (i) Lessor's ownership of the Premises, (ii) this Lease, or (iii) the Rent payable under this Lease and (b) if such tax is not a tax referred to in Section 4.2 hereof to be paid by Lessor. The payment to be made by Lessee or the Homeowners Association pursuant to this Section 4.8 shall be made before any fine, penalty, interest or costs may be added thereto for the non-payment thereof, and Lessee or the Homeowners Association, as applicable, covenants to furnish to Lessor, within thirty Days after the date when the same is payable, official receipts or other evidence satisfactory to Lessor that such tax or excise on rents or other tax has, to the extent aforesaid, been paid. Such tax or excise on rents or other tax referred to in this Section 4.8 shall be Additional Rent.

## ARTICLE 5

### Construction of the Project

5.1 Construction of the Project. (a) Lessor and Initial Lessee, on even date herewith, have entered into a development agreement ("Development Agreement"), a memorandum of which has been, or will be, recorded in the Office of the Recorder of Cook County, Illinois, setting forth certain rights and obligations of Initial Lessee with respect to the development of the Project. Initial Lessee shall construct the Project and the Work in accordance with the Development Agreement.

(b) As part of its obligations pursuant to the Development Agreement, in connection with the construction of the Work, Initial Lessee is to construct (i) a 12 inch water main connection to the existing water main located in Lessor's Beneficiary's parcel designated as Parcel NE-1 and (ii) a fence and the landscaping buffer along the northerly boundary of the Premises. Initial Lessee shall maintain the water main connection and the fence and the southerly side of the landscaping buffer from and after their completion until the recording of the Declaration and, thereafter, the Homeowners Association shall maintain the water main connection and the fence and the southerly side of landscaping buffer through the end of the term of this Lease; provided, however, that neither Initial Lessee nor the Homeowners Association shall be responsible for the maintenance of the water main connection from and after its dedication to, and acceptance by, the Village.

5.2 Title to Buildings and Improvements. At all times during the term of this Lease, the Buildings and all Improvements (exclusive of water, sanitary sewer or storm water trunk lines, mains and laterals and other On-Site Improvements to be dedicated to and accepted by any municipality or other Governmental Authority, title to which shall remain in Lessee only until accepted by such municipality or other Governmental Authority) shall, whether or not affixed to the Land, be the property of Lessee (which may include the Unit Owners and the Homeowners Association, from time to time), its sublessees or assigns, as applicable, subject always to the terms of this Lease. Notwithstanding the foregoing, upon the first to occur of the Termination Date or the Expiration Date, title to the Buildings and all Improvements including any On-Site Improvements not previously dedicated to and accepted by any municipality or other Governmental Authority shall automatically vest in Lessor without any act or the recording of any instrument on the part of Lessor or Lessee.

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## ARTICLE 6

### Development of the Premises as a Residential Development

6.1 **Declaration.** Initial Lessee shall have the right to create a first-class multi-building residential development on the Premises. Prior to the sale of any Unit to an individual Unit Owner, Initial Lessee shall execute, acknowledge and record in the Office of the Recorder of Cook County, Illinois, a homeowners declaration ("Declaration"), shall cause the incorporation and organization of the Homeowners Association and shall cause the Homeowners Association to adopt by-laws ("By-Laws") in each case in full compliance with the provisions and requirements of Section 18.5 of the Condominium Act. Lessor agrees to execute and acknowledge the Declaration, and any and all other documents necessary to create the residential development, for the sole purpose of consenting to the recording of the Declaration and such other documents and the creation of the residential development. It is anticipated that the residential development will be created as a phased development in accordance with the Development Agreement. Portions of the Premises may be subjected to the Declaration from time to time. Lessor agrees to execute and acknowledge amendments or supplements to the Declaration and such other documents as are necessary to subject any such portions of the Premises to the Declaration, as requested by Initial Lessee. The Declaration and By-Laws shall be in form and substance approved in writing by Lessor prior to the recording thereof, and shall contain provisions that are, in the judgment of Lessor, adequate and effective to achieve, without limitation, each of the following objectives:

(a) The Declaration shall require the Homeowners Association to give to each Unit Owner and to each Unit Mortgagee prompt notice of the receipt by the Homeowners Association of any notice of Default given at any time by Lessor to the Homeowners Association.

(b) The Declaration shall require the Homeowners Association from time to time to assess and collect as part of its regular periodic assessments against Units an amount that is sufficient at all times to make payment of all amounts of Ground Rent and Additional Rent with respect to the Residential Project when due under the provisions of this Lease and immediately to deposit the full amount of such assessments allocated to the payment of such Ground Rent and Additional Rent in the Trust Account referred to in Section 6.2(c) and to maintain in such Trust Account a balance at least equal to the full amount of the Rent Reserve (as defined below) required under the provisions of this Section 6.1(b). The Trust Account shall be created by the Homeowners Association prior to the election of the initial board of directors of the Homeowners Association in accordance with Section 18.5 of the Condominium Act. From and after the closing of the Bona Fide Initial Sale of the first (1st) Unit, the Homeowners Association shall be obligated to maintain in the Trust Account an amount ("Rent Reserve") at least equal to the product of (a) the sum of the next two monthly installments of Ground Rent, including any adjustment to Ground Rent under Section 3.1(a) of this Lease, multiplied by (b) the number of Units for which closings of Bona Fide Initial Sales have occurred. The Homeowners Association may, without prior approval of, but upon notice to, Lessor, withdraw and use all or a portion of the moneys in the Trust Account that constitute the Rent Reserve to make payments of Rent due under this Lease in order to prevent or lessen a Default in the payment of Rent; provided that the Homeowners Association subsequently deposits into the Trust Account an amount equal to the amount so withdrawn within six (6) months after the date of withdrawal. Any and all interest earned on funds in the Trust Account shall

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inure to the benefit of the Homeowners Association and may be withdrawn and used by the Homeowners Association for any lawful purpose.

(c) The Declaration shall contain adequate provisions for the enforcement of Unit assessments, including the creation and foreclosure of liens against individual Units for non-payment of regular or special assessments when due and the collection of attorneys' fees incurred in connection with such enforcement.

(d) The Declaration shall provide that the Premises will at no time be used as a "Seniors Only," "Adult Only" or other similarly restricted residential community.

(e) The Declaration shall, notwithstanding any other provisions of laws or ordinances relating to the use and occupancy of individual Units, prohibit the use of any Unit for the conduct of any trade or business; provided, however, that any such restrictions shall not prohibit a Unit Owner from: (i) maintaining his or her personal professional library therein; (ii) keeping his or her personal business or professional records or accounts therein; (iii) handling his or her personal business or professional telephone calls or correspondence therefrom; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing secretarial help and having occasional business visitors.

(f) The Declaration shall require each individual Unit Owner to assume and fully perform all obligations of Lessee under this Lease that relate directly and exclusively to the maintenance, repair, use and occupancy of such Unit Owner's Unit.

(g) The Declaration shall provide that at all times the Homeowners Association shall have the right of access to each Unit (by means of duplicate or master keys or other similar technology), and that authorized representatives of the Homeowners Association may, upon reasonable prior oral or written notice to the Unit Owner of a particular Unit, or without such notice in case of a bona fide emergency, enter upon such Unit from time to time and at reasonable times for the purpose of inspecting such Unit to assure compliance by such Unit Owner with the provisions of this Lease and of the Declaration.

(h) The Declaration shall contain effective provisions obligating each Unit Owner to comply with the provisions of Articles 7, 13, 16, 17 and 19 of this Lease to the extent that such requirements apply directly and exclusively to any such Unit.

(i) The Declaration shall contain provisions expressly acknowledging that an Event of Default under Article 18 of this Lease, unless cured by the Homeowners Association within the time periods provided for in Article 18, may result in early termination of this Lease and the rights of possession of the premises by the Lessee, the Homeowners Association and all Unit Owners.

(j) The Declaration shall require the Homeowners Association to execute and record a joinder to this Lease at the time of the recording of the Declaration, by which joinder the Homeowners Association will agree to perform those obligations of Lessee specifically identified in this Lease as obligations of the Homeowners Association or which, by their nature, are obligations of the Homeowners Association pursuant to Section 6.5 of this Lease.

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(k) The Declaration shall provide that each of the provisions referred to in paragraphs (a) through (j) of this Section 6.1 shall not be amended, modified or superseded in any way, directly or indirectly, without the prior written approval of Lessor.

6.2 Covenants of Homeowners Association. By its joinder to this Lease, the Homeowners Association covenants and agrees that, from and after the date of the recording of the Declaration, unless Lessor otherwise agrees in writing:

(a) The Homeowners Association shall at all times conduct its business in accordance with the requirements of Section 18.5 of the Condominium Act, the Declaration and the By-Laws.

(b) As promptly as practicable, and in no event more than thirty Days after delivery thereof to Unit Owners, the Homeowners Association shall deliver to Lessor, in the manner provided in Article 27 of this Lease for notices to Lessor, true and complete copies of any and all financial statements, budgets, notices or other communications required by law to be delivered to Unit Owners, and of all other notices and communications actually delivered by the Homeowners Association to Unit Owners from time to time relating to the maintenance, repair or restoration of any of the Buildings or other facilities and improvements of the Residential Project, or relating to additions to actual or proposed alterations of any such Buildings facilities or improvements. Notwithstanding the foregoing, the Homeowners Association shall not be required to deliver to Lessor copies of any notices or communications delivered to less than all of the Unit Owners.

(c) The Homeowners Association shall establish and at all times maintain a trust account ("Trust Account") separate from other funds of the Homeowners Association at Old Kent Bank, or at such other bank or financial institution as may be approved from time to time in writing by Lessor for such purpose, for the deposit of that portion of Unit assessments allocable to payment of Ground Rent under this Lease and for maintenance of the Rent Reserve referred to in Section 6.1(b). The Trust Account shall be established for the benefit of Lessor on terms and provisions that shall not be subject to termination, amendment or modification without the prior written consent of Lessor. The Homeowners Association shall, within thirty Business Days after request therefor by Lessor (which request may be made at any time but not more than once per month), deliver to Lessor, in the manner provided in Article 27 of this Lease, a statement certified by the institution at which the Trust Account is maintained, stating the current balance in the Trust Account as of the most recent date for which such balance is ascertainable.

(d) The Homeowners Association shall, on a timely basis from time to time, take all action necessary or appropriate in accordance with applicable law to provide for the assessment, levy and collection of periodic regular or special assessments payable by the Unit Owners of all Units that are part of the Residential Project to provide sufficient funds for the payment of all operating expenses of the Homeowners Association, anticipated future capital expenditures, all amounts of Ground Rent with respect to the Residential Project when due, the Rent Reserve, and any and all other legally required reserves for the operation and maintenance of the Premises as a first-class residential project. In the event of default by any Unit Owner in the payment of any regular or special assessment, the Homeowners Association will promptly and diligently pursue all reasonable efforts to collect such payments, and, if necessary, to enforce its lien rights against such Unit under the provisions of the Declaration and applicable law.

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(e) In addition to its obligation to pay any Impositions (as defined in Article 4 of this Lease) on the Common Area, the Homeowners Association shall monitor the payment of any Impositions attributable to the individual Units by the respective Unit Owners. The Homeowners Association shall promptly inform Lessor of any failure by any Unit Owner or other person responsible for the payment of any Impositions on any given Unit to pay such Impositions when due. In the event of such a failure by a Unit Owner or such other responsible person to pay such Impositions when due, the Declaration shall provide that if such failure would give rise to a lien on Lessor's Estate, then (to the extent permitted by law) the Homeowners Association will have the obligation to redeem or purchase any defaulted taxes and specially assess the cost of such redemption or purchase against the Unit to which such defaulted taxes are attributable. If the Homeowners Association does not or cannot so proceed to redeem or purchase such defaulted taxes, then Lessor shall have the right, after giving notice to the Homeowners Association in the manner provided in Article 27 of this Lease, to redeem or purchase any such defaulted taxes and to assess the cost of such redemption or purchase against the Homeowners Association as Additional Rent; provided, however, that Lessor shall only have such right if both (i) the failure to pay Impositions would give rise to a lien on Lessor's Estate and (ii) the Homeowners Association has not commenced and continued to pursue the redemption or purchase of such defaulted taxes as described above.

### 6.3 Assignment of Lease to Unit Owners and to the Homeowners Association.

Upon the closing of the Bona Fide Initial Sale of each Unit, Initial Lessee shall have the right, without consent from Lessor, to assign to the purchaser thereof an undivided 1/152 interest in this Lease. Each such assignment shall transfer and assign to such purchaser 1/152 of Initial Lessee's interest in (i) this Lease and (ii) the leasehold estate in the Premises created hereby, each with respect solely to the Unit being sold to such purchaser. The form of assignment ("Unit Lease") shall be satisfactory to Lessor and shall contain an express non-recourse assumption by such purchaser of Lessee's rights and obligations pursuant to this Lease with respect to the Unit being purchased by such purchaser (including the obligation to pay in accordance with Section 3.1(e) 1/152 of the Ground Rent due to Lessor under this Lease and to perform all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed or fulfilled under this Lease with respect to the Unit being purchased and with respect to the Common Area in common with all of the other Unit Owners). No later than the date specified in the Declaration, Initial Lessee shall assign its leasehold interest in the Common Area pursuant to this Lease to the Homeowners Association. The form of assignment shall be satisfactory to Lessor and shall contain an express assumption by the Homeowners Association of both Lessee's rights and obligations pursuant to this Lease with respect to the Common Area, and all of the duties and obligations of the Homeowners Association set forth in this Lease. Upon the execution and delivery of any assignment in accordance with this Section 6.3, Initial Lessee shall be released automatically from its obligations under this Lease to the extent of the interest in this Lease being assigned. Upon the closing of the Bona Fide Initial Sale of the one hundred fifty-first (151st) Unit and the assignment of Initial Lessee's interest in this Lease pursuant to this Section 6.3 in connection with such closing, Initial Lessee shall be completely released from all obligations under this Lease, which obligations shall then be those of the Unit Owners, collectively.

6.4 Unit Owners. (a) The Homeowners Association shall not permit any use or occupancy of any Unit except by the owner of a Unit (all of which owners are referred to in this Lease collectively as "Unit Owners" and any one of which is referred to in this Lease as a "Unit Owner") or by a person or persons in possession of a Unit with the Unit Owner's permission, including, without

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limitation and by way of example only, a tenant of the Unit Owner or a member of the Unit Owner's family. From time to time during the term of this Lease upon request of Lessor, but not more often than once during each calendar year, the Homeowners Association shall give written notice to Lessor identifying (by name or names and mailing address) the Unit Owner of each Unit to the extent the Homeowners Association has such information.

(b) A Unit Owner shall have the right, without consent from Lessor or Lessee but subject to the terms and conditions of the Declaration and the By-Laws, to sell or assign to a purchaser such Unit Owner's undivided interest in this Lease and leasehold estate under this Lease with respect to such Unit Owner's Unit, and upon such sale or assignment the assignor Unit Owner shall be released automatically from its obligations under this Lease. A Unit Owner shall also have the right, without consent from Lessor or Lessee but subject to the terms and conditions of the Declaration and the By-Laws, to lease and sublease such Unit Owner's undivided interest in this Lease and leasehold estate under this Lease with respect to such Unit Owner's Unit. A Unit Owner shall also have the right, without consent from Lessor or Lessee but subject to the terms and conditions of the Declaration and the By-Laws, to assign and mortgage such Unit Owner's undivided interest in this Lease and leasehold estate under the Lease with respect to such Unit Owner's Unit. Such assignment may be by means of a Mortgage on the leasehold estate for any amounts and upon any terms, including term of loan, interest rates, payment terms (including balloon or amortizing loans), prepayment privileges or other restrictions as may be desired by the Unit Owner, or by means of a deed, as applicable (any Mortgage meeting the foregoing requirements and any supplement thereto or any modification renewal, replacement or extension thereof is referred to herein as a "Unit Mortgage"). Notwithstanding the foregoing, no Unit Mortgage shall extend to or affect all or any portion of Lessor's Estate.

(c) Except as otherwise provided in Articles 18 and 29, Lessor shall not cancel or terminate this Lease without the prior written consent of the Unit Mortgagee under any Unit Mortgage, so long as such Unit Mortgage shall remain in effect.

**6.5 Homeowners Association Representative of Unit Owners; Obligations of Lessee.** From and after the date of the recording of the Declaration, the Homeowners Association shall be responsible for performing and causing the performance of all obligations, rights and responsibilities of Lessee under this Lease with respect to the Residential Project or which by their context are or would be the obligations of the Homeowners Association or the Unit Owners, except those obligations, rights and responsibilities of Initial Lessee under this Lease. The Homeowners Association shall cause the Unit Owners to perform all obligations, rights and responsibilities of Lessee under this Lease which are to be performed by the Unit Owners. No Unit Owner (other than Initial Lessee) shall communicate directly with Lessor or Lessor's Beneficiary, nor shall Lessor or Lessor's Beneficiary communicate directly with any Unit Owner (other than Initial Lessee); all such communications shall be made by or to the Homeowners Association. Neither the Homeowners Association nor the Unit Owners shall have any rights or responsibilities with respect to either (x) any portion of the Premises not part of the Residential Project, or (y) any rights of Initial Lessee hereunder. In furtherance of the foregoing and the other provisions of this Lease, a power coupled with an interest is hereby reserved and granted to the Homeowners Association to act, and to execute and deliver documents, on behalf of the Unit Owners whenever the Unit Owners are permitted or required to take any action or execute and deliver any documents pursuant to this Lease. Each Unit Lease, assignment of this Lease, Mortgage, or other

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instrument affecting this Lease or a Unit shall be deemed to be a grant and acknowledgement of, and a consent of the reservation of, the foregoing powers of the Homeowners Association.

## ARTICLE 7

### Use of Premises; Compliance with Requirements; Maintenance and Repair

7.1 Use of Premises. At all times during the term of this Lease, the Premises shall be used by Lessee, the Homeowners Association and the Unit Owners, solely as a multi-unit residential development and for no other purpose. Subject to the foregoing, Lessee hereby covenants and agrees that at no time will the Premises be used as a "Seniors Only", "Adult Only" or other similarly restricted residential community.

7.2 No Violation of Applicable Law. Lessee acknowledges that because Lessor intends directly or indirectly to retain the fee interest in the Land, Lessor has legitimate concerns about the uses to which the Land and development thereon will be put. Accordingly:

(a) Neither Lessee nor any Unit Owner shall make or permit any use of the Premises that violates any applicable statute, ordinance, regulation or other requirement (including, without limitation, any applicable provisions of the Annexation Agreement) of each and every federal, state and local governmental or quasi-governmental body having jurisdiction over the Premises (each such body is herein referred to as a "Governmental Authority" and any two or more of such bodies are herein referred to collectively as "Governmental Authorities") or that constitutes a nuisance, public or private, or that may render void or voidable any insurance then in force pursuant to the provisions of this Lease. Lessee shall, at Lessee's sole cost and expense, procure any and all necessary permits, licenses, or other authorizations from time to time required for the lawful conduct of its business on the Premises.

(b) Neither Lessee nor any Unit Owner shall use or permit to be used in connection with the Project the name "Society of the Divine Word," "Techny" or any words or phrases similar thereto or suggesting any religious affiliation or other affiliation with Lessor without Lessor's prior written consent, which consent may be withheld for any reason whatsoever (whether or not arbitrary) or no reason whatsoever.

7.3 Conformity with Legal and Insurance Requirements. (a) In all events, ordinary and extraordinary, whether or not foreseen or foreseeable as of the date of this Lease, Lessee, the Homeowners Association and the Unit Owners shall keep or cause to be kept the Premises and the Environs (to the extent that the owner or occupant of the Premises may be legally responsible for the condition of the Environs) in a condition conforming to the requirements (i) of all applicable statutes, ordinances, regulations and other requirements of any Governmental Authority ("Governmental Requirements"), and (ii) of all policies of insurance maintained in force by Lessee or Lessor on or with respect to the Premises pursuant to the provisions of this Lease.

(b) Notwithstanding the foregoing, Lessee shall have the right to contest by appropriate legal proceedings the order or directive of any Governmental Authority requiring compliance

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with Governmental Requirements provided (i) such legal proceedings shall operate to prevent (A) the sale of the Premises or any part thereof or (B) any Governmental Authority from causing any work to be performed on the Premises to cure any alleged violations of Governmental Requirements, and (ii) Lessee shall at all times during the pendency of such proceedings keep on deposit with Lessor, or such person or corporation as Lessor may direct in writing or as may be provided by law, as security for the payment of all costs and expenses related to any alleged violation of Governmental Requirements, a sum of money, a surety bond issued by an insurance company acceptable to Lessor or such other security as may be reasonably required by Lessor, in any such case in an amount equal to 110% of the cost, reasonably estimated by Lessor, that may be required to comply with all Governmental Requirements that Lessee seeks to challenge.

7.4 **Operation, Maintenance and Repair of Premises.** Lessee, the Homeowners Association and the Unit Owners shall keep or cause to be kept the Premises (including the Land and the Project) and the Environs (to the extent that the owner or occupant of the Premises or the Project may be legally responsible for the condition of the Environs) in a reasonably clean and orderly condition, reasonably free of accumulations of rubbish, snow, ice and unlawful obstructions. Lessee, the Homeowners Association and the Unit Owners shall also keep or cause to be kept the Project in good order and condition, and to that end shall make or cause to be made all repairs, interior and exterior, structural and non-structural, extraordinary as well as ordinary, foreseen as well as unforeseen, that are reasonably necessary or advisable in accordance with good standards of operation and maintenance applied by owners of properties comparable in class, age and quality located in the Chicago metropolitan area. For purposes of this Section 7.4, repairs shall include all replacements, renewals, alterations, additions and betterments necessary to maintain the good appearance and to prevent any physical deterioration of the Premises (including the Land and the Project) beyond ordinary wear and tear, including, without limitation, all repairs to the roof and exterior surfaces of the Buildings necessary to make the Buildings free from leakage of rain or wind which might adversely affect the structural integrity or the Buildings or cause damage to the interior thereof. All repairs shall be at least equal in quality and class to the work and materials then in customary usage in properties comparable in class, age and use to the Premises (including the Land and the Project).

## ARTICLE 8

### Insurance

8.1 **Property Insurance.** At all times during the term of this Lease (including any period or periods of time during the course of any work in connection with any construction of or any Change or Alteration to any Buildings or Improvements) Lessee shall:

(a) keep the Buildings and Improvements insured against all risk of physical loss, including, but not limited to, loss or damage caused by fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse or earthquake to the extent coverage for such risks is from time to time customarily available at commercially reasonable rates in the commercial property insurance market for the Building in an amount equal to not less than 100% of the Full Insurable Value of the Building and Improvements;

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(b) maintain builders' risk broad form insurance coverage in such form or forms of policies as may be from time to time customarily maintained for similar properties in the vicinity of the Premises covering the value of all material and equipment on the Premises (but only during the time that any work in connection with any construction or any Change or Alteration is in progress on the Premises and until completion and final acceptance thereof), unless the same coverage is included within Lessee's insurance in force pursuant to Section 8.1(a); and

(c) to the extent there is a central heating and cooling system for the Project, maintain boiler and machinery insurance with respect to all equipment and objects (which are part of the Buildings) customarily covered by such insurance in an amount equal to their replacement cost with property damage and personal injury coverages in such amounts as Lessor shall reasonably require.

The insurance to be maintained by Lessee pursuant to Section 8.1(a) shall include, among others as named insureds, Lessor and Lessee, as their interests may appear, and shall also include (i) so-called "increased cost of construction" and "demolition cost" endorsements covering costs that may be incurred in connection with elements of rebuilding or reconstruction required to comply with changes to building codes and other governmental requirements and costs of demolishing undamaged portions of the Building if required by law, and (ii) a so-called "cost of clearing" endorsement covering cost of clearing debris and returning the Land to grade in the event the Building and Improvements are not rebuilt after the occurrence of any fire or other casualty.

**8.2 Liability Insurance.** At all times during the term of this Lease, Lessee shall maintain, at Lessee's sole cost and expense, but for the purpose of affording insurance coverage to Lessor, Lessor's Beneficiary, and Lessee as required hereunder, the following kinds and amounts of insurance:

(a) Commercial general liability insurance with a broad form endorsement providing insurance against claims for bodily injury (including death), property damage occurring upon or in the Premises, the Buildings or the Environs and contractual liability (including an endorsement specifically acknowledging that this Lease is an "insured contract" under such policy), and having limits of liability not more than the limits that are customary and reasonable for similar buildings and uses in the Chicago metropolitan area as reasonably determined from time to time by Lessor and required by notice from Lessor to Lessee, but in no event less than \$1,000,000 as the combined single limit per occurrence;

(b) At any time that the Homeowners Association or similar organization is in existence, directors' and officers' liability insurance for the directors and officers of such association or organization having limits of liability of not less than \$1,000,000;

(c) Umbrella liability insurance providing excess coverage on a so-called "following form" basis above the limits of the insurance required to be provided in Section 8.2(a) and 8.2(b) above and having limits of liability of not less than \$10,000,000;

(d) Worker's compensation insurance in an amount not less than the required statutory limits and including employer's liability insurance with limits of not less than \$500,000 per occurrence;

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(e) Comprehensive automobile liability insurance covering owned automobiles, automobiles under long-term lease, hired automobiles, employer's non-ownership liability, medical payments and uninsured motorist coverage for limits not more than limits that are customary and reasonable for owners of similar buildings with similar uses in the Chicago metropolitan area as reasonably determined from time to time by Lessor and specified by notice from Lessor to Lessee, but in no event less than \$500,000 (with a special limit of \$5,000 with respect to medical payments) as the combined single limit per occurrence; and

(f) Such other liability insurance for such coverages and in such amounts as is customary and reasonable for owners of similar buildings with similar uses in the Chicago metropolitan area.

The foregoing policies of insurance shall be primary with respect to Lessor's Protected Persons, but only with respect to any claim arising solely out of activities or occurrences relating to the Premises.

8.3 Responsibility for Obtaining and Maintaining Insurance. From and after the date of the recording of the Declaration, the Homeowners Association shall be solely responsible for obtaining and maintaining all insurance required pursuant to this Article 8; provided, however, that the property insurance required by Section 8.1 shall be obtained and maintained, with respect to each Unit, by the Unit Owner of that Unit and the Homeowners Association shall only be responsible for such insurance required by Section 8.1 with respect to the Common Area. Notwithstanding the foregoing, the Homeowners Association shall have the obligation to cause each Unit Owner to maintain the property insurance required by Section 8.1 with respect to such Unit Owner's Unit and, if such Unit Owner fails to so maintain such property insurance, the Homeowners Association shall have the right and obligation to obtain such property insurance on behalf of the Unit Owner and specially assess the cost of such insurance against the Unit to which it is applicable.

8.4 Approval and Evidence of Insurance. All insurance required to be maintained pursuant to this Article 8 shall be secured from insurers licensed by the Insurance Department of the State of Illinois (or its successor agency) and reasonably acceptable to Lessor. Upon the execution of this Lease and thereafter not less than thirty Days prior to the expiration dates of the expiring insurance policies theretofore furnished pursuant to this Article 8, Lessee shall deliver to Lessor originals of the renewal or replacement policies, or true and correct copies thereof certified by the respective insurers, or other evidence of continuation of insurance, together with evidence of the payment of the applicable premiums for the insurance required hereunder, which shall be stamped upon the policies or the copies delivered to Lessor, or otherwise evidenced to the reasonable satisfaction of Lessor. In the event actual policies are not available at such time, Lessee shall deliver binders or certificates evidencing such insurance within the time periods specified and shall deliver the policies required as soon as practicable thereafter.

8.5 Additional Insureds. All policies of insurance required to be maintained pursuant to Section 8.2 (a) shall name Lessor and Lessor's Beneficiary and Lessor's Protected Persons as additional insureds as their interests may appear, provided Lessor has provided Lessee in writing with the specific names of such parties, and (b) shall provide that any loss shall be payable as therein provided notwithstanding any act or negligence of Lessor, Lessee or any Unit Owner or other occupant of the Premises or the Building which might otherwise result in a forfeiture of said insurance. Lessor shall,

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from time to time, provide Lessee in writing with the specific names of such of Lessor's and Lessor's Beneficiary's Protected Persons as Lessor wishes to have separately named as additional insureds in any policies required pursuant to Sections 8.1 or 8.2. In addition, the insurance required to be maintained pursuant to Section 8.1 may also name, as named insureds, as their interests may appear, any Unit Mortgagee, any Leasehold Mortgagee and, if Lessor so requests, any Fee Mortgagee.

**8.6 Notice of Cancellation.** All policies of insurance required to be maintained pursuant to this Article 8 shall, to the extent obtainable, contain an agreement by the insurers that neither the policies nor any particular coverage thereof shall be canceled or not renewed without at least thirty Days' prior written notice to Lessor, except that only ten Days' notice shall be required with respect to cancellation or non-renewal due to non-payment of premiums.

**8.7 Adjustment of Losses; Use of Proceeds.** The loss, if any, under any insurance required to be maintained pursuant to Section 8.1 shall be adjusted and agreed to with the insurers by Lessee and, if required under any Leasehold Mortgage or any Unit Mortgage, by the First Leasehold Mortgagee and such Unit Mortgagees. In the case of any loss not exceeding 10% of the Full Insurable Value of the Buildings, the proceeds of any applicable insurance, after the loss is so adjusted, if permitted by the First Leasehold Mortgagee and the Unit Mortgagee of any Units damaged as part of such loss, shall be paid to Lessee for use in the Restoration of the Premises in the manner required under Section 12.1. In all other cases the proceeds of any applicable insurance, after the loss is so adjusted, shall be (i) paid to or at the direction of the First Leasehold Mortgagee (but without changing or altering any obligation Lessee may have to rebuild or restore pursuant to Article 12 of this Lease), if any, and of the Unit Mortgagee of any Units damaged as part of such loss, or (ii) if there is no such First Leasehold Mortgagee and no such Unit Mortgagee and if Restoration is required under Article 12, paid to Lessor, or to such other person or institution capable of performing the obligations imposed upon it pursuant to Article 12 as Lessor may reasonably designate, for use in restoring the Premises, or (iii) if there is no such First Leasehold Mortgagee and no such Unit Mortgagee and if Restoration is not required pursuant to Article 12, applied as provided in Section 12.5(c) or Section 12.5(c), as the case may be. In any case, the proceeds shall be deemed to be held in trust by the recipient (any such recipient being referred to as the "Insurance Trustee") to be applied or used in accordance with the provisions of Article 12.

**8.8 Waiver of Subrogation.** Lessor, Lessor's Beneficiary, and Lessee each hereby waive any and every claim for recovery from the other for any and all loss of or damage to the Building and Improvements or to the contents thereof. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessor and Lessee each agree to give to each insurance company that has issued, or in the future may issue, a policy of the type required from time to time pursuant to Section 8.1, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver. Notwithstanding the foregoing, the foregoing release and waiver of claims shall not be operative, nor shall the foregoing endorsements be required in any case in which the effect of such release or waiver is to invalidate insurance coverage or the right of the insured to recover thereunder or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within ten Days following notice from the party procuring such insurance, to pay such increased cost, thereby keeping such release or waiver in full force and effect).

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8.9 **Renegotiation; Disputes.** In addition to the insurance required pursuant to Sections 8.1 and 8.2, Lessee shall also maintain at Lessee's own cost and expense, but for the mutual benefit of Lessor and Lessee, insurance against such other hazards, liabilities or potential claims and in such amounts as may be reasonably required from time to time by Lessor. However, all of the provisions of this Article 8 relating to the insurance required to be provided by Lessee shall be subject to review and redetermination from time to time based on circumstances and changes in the insurance industry, and Lessor and Lessee shall negotiate in good faith from time to time to so review and redetermine the requirements of this Article 8 in light of changing practices in the insurance industry, customarily available coverages, costs and the objectives of Lessor and Lessee; provided, however, that Lessor may not require insurance coverages or changes in insurance coverages that do not comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veteran's Affairs (formerly known as the Veteran's Association), or any governmental agency which performs (or may perform) functions similar to those currently performed by such entities, although Lessor may require insurance coverages more stringent than the requirements of such entities, provided Lessor's requirements are not unreasonable. Disputes under this Article 8 with respect to the required minimum policy limits for insurance required to be provided by Lessee shall be determined by arbitration pursuant to Article 20, provided that the arbitrator or arbitrators selected shall be a person or persons of recognized standing in the insurance industry.

## **ARTICLE 9**

### **Lien**

9.1 **No Authority To Create Liens Against Lessor's Interest.** Lessee shall have no right, authority or power to bind Lessor or Lessor's Beneficiary for the payment of any claim for labor or material or for engineering or architect's fees, or for any charge or expense incurred in the erection, construction, alteration, restoration, maintenance, operation or management of the Premises (including the Buildings or Improvements) nor to render Lessor's Estate liable for any lien or right of lien for any labor, material services (including management services) or for any other charges for expenses incurred in connection therewith. In addition, Lessee shall not under any circumstances be considered the agent of Lessor in conducting any work undertaken in connection with any erection, construction, repair, renewal, replacement, reconstruction, alteration, restoration or maintenance of the Premises or in the operation of the Premises.

9.2 **No Liens, Charges, or Encumbrances Against Premises.** Lessee shall, at all times, keep the Premises free and clear of mechanics', materialmen's, and other liens, and all charges, claims, and encumbrances caused or created by Lessee or anyone claiming through or under Lessee.

9.3 **Lessee's Duty To Obtain Discharge Of Liens Against Premises.** If, because of any act or omission (or alleged act or omission) of Lessee, any mechanics' or other lien, charge, or order for the payment of money or other encumbrance shall be filed against Lessor or any portion of the Premises (whether or not such lien, charge, order, or encumbrance is valid or enforceable as such), Lessee shall, at its own cost and expense, after written notice from Lessor requesting the same, cause

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same to be discharged of record or bonded within 30 days after such notice; and Lessee shall indemnify and hold Lessor harmless against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable attorneys' fees, resulting therefrom. If Lessee fails to comply with the foregoing provisions, Lessor shall have the option of discharging or bonding any such lien, charge, order, or encumbrance, and Lessee agrees to reimburse Lessor for all costs, expenses, and other sums of money in connection therewith (as Additional Rent) with interest at the Lease Interest Rate from the date such costs, expenses or other sums of money are incurred; provided that Lessor may not so discharge or remove any lien nor shall an Event of Default be deemed to have occurred under this Section 9.3 if Lessee is in good faith contesting the same in the same manner and subject to the terms and conditions as are provided in Section 4.5 and 4.6 with respect to Lessee's right to contest Impositions and Lessor's joinder in any such proceeding. The remedies provided to Lessor under this Section 9.3 shall be in addition to all of the other remedies provided to Lessor by law or this Lease.

## ARTICLE 10

### Assignments, Subleases, Mortgages and Sales

10.1 Assignment By Lessee. (a) Except as provided in Article 6, (i) this Lease or (ii) the leasehold estate hereby created, shall not, under any circumstance, whether voluntary or involuntary, or by operation of law (except as otherwise provided in Section 10.1(b) with respect to assignments or transfers by or through a Leasehold Mortgage or a Unit Mortgage or by assignment or transfer in lieu of foreclosure of any such Leasehold Mortgage or a Unit Mortgage), be assigned or transferred by Lessee without in each case first obtaining the prior written consent of Lessor, which consent may be withheld for any reason or no reason whatsoever. Notwithstanding the foregoing, this Lease and the leasehold estate created hereby may be transferred or assigned to an Affiliate of Initial Lessee provided Initial Lessee gives Lessor not less than five Days prior notice of such transfer or assignment. In no event shall such transfer or assignment to an Affiliate of Initial Lessee relieve Initial Lessee of its obligations hereunder.

(b) For purposes of this Section 10.1, the making of a Leasehold Mortgage or a Unit Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate created hereby, nor shall any Leasehold Mortgagee or a Unit Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate created hereby so as to require the Leasehold Mortgagee or Unit Mortgagee, as such, to assume the performance of any of the terms, covenants, conditions, agreements and obligations on the part of Lessee to be performed or met hereunder. In addition, any sale of Lessee's interest in and to this Lease and of the leasehold estate created hereby in any proceedings for the foreclosure of any Leasehold Mortgage or a Unit Mortgage, or the assignment or transfer of this Lease and of the leasehold estate created hereby under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage or a Unit Mortgage, shall not be deemed to be an assignment or transfer within the meaning of Section 10.1(a) for which Lessor's consent shall be required. However, any assignee or transferee in any assignment or transfer in lieu of the foreclosure of a Unit Mortgage shall be deemed to have assumed (on a non-recourse basis and subject to the following provisions of this Section 10.1(b)) the performance of all of the terms, covenants, conditions, agreements and obligations on the part of Lessee to be performed hereunder from and after the effective date of realization of Lessee's rights created pursuant to this Lease by the Unit Mortgagee

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or someone claiming by, through or under the Unit Mortgagee. Notwithstanding the foregoing, any Unit Mortgagee or other purchaser, assignee or transferee in connection with any sale, assignment or transfer in connection with a Unit Mortgage referred to in the immediately preceding sentence, shall be deemed to have assumed, and shall be obligated to perform, only the terms, covenants, conditions, agreements and obligations on the part of Lessee to be performed hereunder with respect to the Unit subject to such Unit Mortgagee's Unit Mortgage by the Unit Owner of such Unit. Any termination of this Lease by the Leasehold Mortgagee pursuant to any rights granted to the Leasehold Mortgagee shall not be a termination of this Lease with respect to the Residential Project, nor shall any such termination be a Default or an Event of Default under this Lease or the Development Agreement on the part of any person or entity (including, but not limited to, Initial Lessee, the Homeowners Association, any Unit Owner, any Leasehold Mortgagee, any Unit Mortgagee, or any successor, purchaser, assignee or transferee of any of the foregoing). Any such termination shall not affect the Homeowners Association's or any Unit Owner's right to use, occupy and enjoy the Common Area, such Unit Owner's Unit or the Residential Project generally. In the event of any such termination, the Homeowners Association and the Unit Owners collectively shall only be responsible for that portion of the Rent (including the Ground Rent) and those obligations, rights and responsibilities of Lessee attributable to such persons with respect to the Residential Project pursuant to Sections 3.1(e) and 6.5. In the event of any such termination, Lessor shall enter into an attornment and non-disturbance agreement with the Homeowners Association and the Unit Owners pending the execution and delivery of a new ground lease between Lessor and the Homeowners Association and the Unit Owners; and Lessor and the Homeowners Association and the Unit Owners shall promptly enter into such a new ground lease which shall provide for terms (including, but not limited to, the amount of annual ground rent) no less favorable to the lessee than provided for in this Lease. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Homeowners Association to execute and deliver such a new ground lease on behalf of the Unit Owners as proxy or attorney-in-fact, as the case may be. Each Unit Lease, assignment of this Lease, Mortgage or other instrument affecting this Lease or a Unit shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the foregoing powers of the Homeowners Association. For purposes of this Section 10.1(b), the phrase "effective date of realization of Lessee's rights created pursuant to this Lease" shall mean the earlier to occur of: (i) the entry of an order confirming the sale of the portion of the Premises subject to the Unit Mortgage pursuant to a judgment of foreclosure of the Unit Mortgage and the expiration of all applicable redemption and reinstatement periods; (ii) the issuance of an order placing the Unit Mortgagee or its designee in possession; (iii) the issuance of an order appointing a receiver; and (iv) the execution and delivery by the Initial Lessee and the acceptance by the Unit Mortgagee or such other purchaser, assignee or transferee of a deed, assignment or other transfer in lieu of foreclosure.

(c) The limitations on transfer contained in this Section 10.1 shall not be deemed to apply to or prevent, nor shall Lessor's approval be required in connection with, (i) the granting of licenses or easements in the leasehold estate created hereby to facilitate the development of the Premises in accordance with the terms of this Lease and the Development Agreement; or (ii) the granting of security interests in personal property, trade fixtures and trade equipment.

**10.2 Mortgage by Initial Lessee.** (a) Initial Lessee shall have the right, without Lessor's consent, to mortgage its interest under this Lease and in the Buildings and Improvements by means of a Mortgage for any purpose related to the financing of the development and construction of the Project, for any amounts and upon any terms, including term of loan, interest rates, payment terms

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(including balloon or amortizing loans), prepayment privileges or other restrictions as may be desired by Initial Lessee, provided that (i) at the time of making such Mortgage, there is no existing or unremedied Default or Event of Default, and (ii) within ten Days after the execution and delivery of any such Mortgage, the requirements of Section 10.2(b) are satisfied (any Mortgage meeting the foregoing requirements and any supplement thereto or any modification, renewal, replacement or extension thereof is referred to herein as a "Leasehold Mortgage"). Notwithstanding the foregoing, no Leasehold Mortgage shall extend to or affect all or any portion of Lessor's Estate.

(b) Lessor shall not be deemed to have notice of any Leasehold Mortgage, of any amendment to supplement, modify, renew, replace or extend the same or of any assignment thereof, nor shall Lessor have any duty or obligation with respect thereto, unless and until (i) a copy of the original of such Leasehold Mortgage, amendment or assignment, as the case may be, certified by the Leasehold Mortgagee as being a true, correct and complete copy thereof, is delivered to Lessor, and (ii) written notice containing the name and address of the Leasehold Mortgagee or assignee of such Leasehold Mortgage, as the case may be, is given to Lessor in the manner provided in Article 27.

(c) Except as otherwise provided in Articles 18 and 28, Lessor shall not cancel or terminate this Lease without the prior written consent of the Leasehold Mortgagee under any Leasehold Mortgage, so long as such Leasehold Mortgage shall remain in effect.

10.3 Mortgage by Lessor. Nothing contained in this Lease shall be construed to preclude (a) Lessor at any time and from time to time, with any lender and on any terms, from creating a lien on or mortgaging Lessor's Estate by means of a Mortgage or from entering into an amendment to supplement, renew, modify, consolidate, replace or extend the same (any such Mortgage and any supplement thereto or any modification, renewal, consolidation, replacement or extension thereof is referred to herein as a "Fee Mortgage") or (b) any Fee Mortgagee from assigning the same, provided that in either or any such case (i) any lien, rights or interests created thereby shall at all times be subject to the leasehold estate created by this Lease and the rights of the Lessee, Initial Lessee, the Homeowners Association, the Unit Owners, any Leasehold Mortgagee and any Unit Mortgagee in and to this Lease and the Development Agreement; and shall in no way prohibit any future development of the Premises in accordance with this Lease and the Development Agreement; and (ii) Lessor shall not mortgage portions of Lessor's or Lessor's Beneficiary's fee title interest in the Premises or any other parcels of land that may be within the zoning lot of which the Premises is a part to different Fee Mortgagees unless no subdivision is required in connection with any such mortgage or mortgages. Lessor shall provide Lessee with notice of the name and address of the Fee Mortgagee promptly following execution of any Fee Mortgage.

10.4 Sale by Lessor; Right of First Opportunity. (a) Nothing contained in this Lease shall be construed to preclude Lessor at any time and from time to time, with any purchaser and on any terms, from selling or otherwise transferring all (but not less than all) of Lessor's Estate by means of a deed given pursuant to an outright sale, articles of agreement for deed, a Lessor-financed sale with a purchase money mortgage, or otherwise; provided (i) the effect of such sale or other transfer would not result in separate ownership of the fee title to parcels within one zoning lot pursuant to or under the zoning ordinance of the Village; (ii) the grantee pursuant to such sale or other transfer expressly assumes (by a written assumption agreement reasonably acceptable to Lessee that is recorded with the Recorder of Deeds of Cook County, Illinois) all of the obligations of Lessor pursuant to this Lease; and (iii) Lessor

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first provides Lessee with notice ("Notice of Sale") of the proposed terms under which Lessor intends to offer Lessor's Estate for sale or upon which Lessor intends to accept an offer for purchase, including purchase price, closing date (which may not be earlier than forty-five Days following the date of giving of Lessor's Notice of Sale) and other material business terms. Lessee shall have forty-five Days following the date of giving of Lessor's Notice of Sale within which to give notice ("Notice of Purchase") to Lessor of Lessee's election to purchase Lessor's Estate upon all of the terms set forth in the Notice of Sale. In the event Lessee does provide Lessor with a Notice of Purchase, then Lessor shall sell and Lessee shall be obligated to purchase Lessor's Estate to Lessee upon the terms set forth in the Notice of Sale (and at the purchase price set forth in the Notice of Sale), except that closing of the sale to Lessee shall be not less than ninety Days after the date of the Notice of Purchase, and on such other terms and conditions as are set forth in the Chicago Title Insurance Company (Form B) Real Estate Sales Contract (for commercial or industrial properties) or such other similar standard form of agreement as may be then in use in the Chicago metropolitan area, except that either such form agreement shall be modified to provide that (x) in the event of default by either party thereunder, the non-defaulting party shall be entitled to pursue any and all of its legal and equitable remedies and (y) Lessor's conveyance of the Premises shall be by special warranty or trustee's deed, as appropriate. Any sale by Lessor to Lessee pursuant to this Section 10.4 shall be "as is" and Lessor shall not be required to make any representation or warranty whatsoever as to the condition of the Premises or as to any other matter, except that Lessor shall represent and warrant that Lessor is the sole owner of all of Lessor's Estate and that Lessor has full capacity, right, power and authority to execute, deliver and perform the form of agreement for sale of Lessor's Estate and that all required actions and approvals therefor have been duly taken and obtained. If Lessee has not given Lessor a Notice of Purchase during the forty-five Day period referred to above, Lessee's rights under this Section 10.4 with respect to such Notice of Sale shall be deemed waived and of no further force or effect and Lessor shall be free to sell or otherwise transfer Lessor's Estate to any third party for a purchase price not less than the purchase price set forth in the Notice of Sale and on other terms not more favorable to the purchaser than those set forth in the Notice of Sale.

(b) Notwithstanding the provisions of Section 10.4(a): (1) Lessor shall at all times be entitled to offer Lessor's Estate for sale or to solicit offers to purchase Lessor's Estate subject to Lessee's rights hereunder (including Lessee's rights pursuant to Section 10.4(a)); (2) Lessee's right to purchase Lessor's Estate in accordance with the foregoing shall not apply to any sale or other transfer of Lessor's Estate by Lessor to any Affiliate or to any other religious order, body or institute of the Roman Catholic Church, provided that such entity expressly assumes all of the obligations of Lessor pursuant to this Lease; (3) in the event Lessor does not consummate a sale or other transfer of Lessor's Estate in accordance with the terms of Lessor's Notice of Sale (for reasons other than a default by Lessee hereunder or under any agreement for purchase and sale entered into by Lessee with Lessor), within 180 Days from the date of such Notice of Sale or such longer period as may be specified in the Notice of Sale (if such longer period is required for reasons which may include, but not be limited to, zoning contingencies or phased purchases over a time period in excess of 180 Days), Lessee's rights pursuant to this Section 10.4 shall be reinstated with respect to any subsequent offer to purchase, sell or transfer Lessor's Estate; (4) if Lessor does consummate a sale or other transfer of Lessor's Estate in accordance with the terms of Lessor's Notice of Sale, Lessee's rights pursuant to this Section 10.4 shall continue to apply with respect to any subsequent offers to purchase, sell or transfer Lessor's Estate by the then-owner of Lessor's Estate; and (5) if Lessee elects to purchase Lessor's Estate and Lessee and Lessor enter into a purchase and sale agreement with respect to such purchase in accordance with Section 10.4(a), and Lessee subsequently defaults under such purchase and sale agreement prior to Lessor's conveyance of the

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Premises and Lessor terminates such purchase and sale agreement, then Lessee's rights pursuant to this Section 10.4 shall also terminate and shall not be applicable with respect to any subsequent offer to purchase, sell or transfer Lessor's Estate.

(c) Notwithstanding anything to the contrary contained in this Lease (including specifically, but without limitation, the provisions of Sections 10.4(a) and 10.4(b) and the definition of "Lessee"), Lessee's rights pursuant to this Section 10.4 shall be vested solely in, and shall be exercisable solely by, Initial Lessee (or the Leasehold Mortgagee, if the Leasehold Mortgagee has foreclosed the Leasehold Mortgage or accepted an assignment or transfer in lieu of the foreclosure of the Leasehold Mortgage of Initial Lessee's rights under this Lease and the leasehold estate created hereby), until the first Day of the first month following closing of the last Bona Fide Initial Sale of a Unit (unless Initial Lessee, or the Leasehold Mortgagee, as the case may be, in its sole and absolute discretion, transfers or assigns its rights under this Section 10.4 prior to such date), and from and after the first Day of the first month following closing of the Bona Fide Initial Sale of the one hundred fifty-first (151st) Unit, Lessee's rights pursuant to this Section 10.4 shall be vested solely in the Homeowners Association and shall be exercisable solely by the Homeowners Association by and through its board of directors. Notwithstanding anything to the contrary contained in this Lease, none of the provisions of this Section 10.4 may be waived, changed, amended, modified or discharged prior to the closing of the Bona Fide Initial Sale of the one hundred fifty-first (151st) Unit without the written consent of Initial Lessee or the Leasehold Mortgagee, as the case may be, which consent may be withheld or conditioned in the sole and absolute discretion of Initial Lessee or the Leasehold Mortgagee, as the case may be.

## ARTICLE 11

### Condemnation

11.1 Condemnation of Entire Premises If at any time during the term of this Lease (a) the entire Premises or the entire Project shall be taken as a result of the exercise of any power of eminent domain of any Governmental Authority or by agreement between Lessor, Lessee and such Governmental Authority (a taking by either of such methods is herein called a "Condemnation Proceeding"), or (b) less than the entire Premises shall be taken, but it shall have been agreed between Lessor and Lessee that in any such case the Project cannot be repaired, restored or replaced in a manner that permits the remaining portions thereof to be operated as economically useful and architecturally complete units, this Lease shall terminate on the date title is vested in the condemning Governmental Authority under such Condemnation Proceeding, and all Rent and other amounts payable by Lessee hereunder shall be prorated to such date. Notwithstanding any judicial allocation of any award made in the Condemnation Proceedings, such award shall be divided between Lessor and Lessee in accordance with the value of their respective estates in the Premises determined as of the date title is vested in the condemning Governmental Authority, but without regard to the termination of this Lease, such values to be agreed upon by the parties, or in the absence of such agreement, to be determined by appraisal pursuant to the provisions of Article 21. Lessee's portion of such award shall be paid to the Leasehold Mortgagee, or in the absence of a Leasehold Mortgagee, to the Unit Mortgagees, and in the absence of any Unit Mortgagees or to the extent of any excess, to the Unit Owners and Initial Lessee in accordance with the value of their respective estates in the Premises determined as of the date title is vested in the condemning Governmental Authority.

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11.2 **Partial Condemnation.** (a) If at any time during the term of this Lease less than the entire Premises or entire Project shall be taken in any Condemnation Proceeding and it shall have been agreed between Lessor and Lessee that portions of the Project can be repaired, restored or replaced in a manner that permits the remaining portions thereof to be operated as economically useful and architecturally complete units, this Lease shall not terminate but shall continue in full force and effect for the remainder of the stated term, and Lessee shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed under this Lease as though such taking had not occurred, subject to the provisions of this Section 11.2. Rent shall abate equitably in proportion to the percentage diminution, if any, in the fair market value of the portion of the Premises and Project so taken as of the date title is vested in the condemning Governmental Authority under the Condemnation Proceeding. Lessee shall, at its sole cost and expense, but with the right to use the proceeds from the Condemnation Proceeding, promptly restore (except for Unavoidable Delays) that portion of the Premises and Project not so taken to an economically useful and architecturally complete unit of the same general character and condition (as nearly as may be reasonably possible) as existed before such taking. Before Lessee shall let any contracts for, or commence the work of, such restoration and during the course of such restoration, Lessee shall comply with the applicable provisions of Article 13. To the extent that any such taking in any Condemnation Proceeding shall include the taking of any Units and such Units cannot be restored in accordance with this Section 11.2(a) after such taking, then the Unit Owners of such Units shall be released from their obligations under this Lease as of the date of such taking.

(b) Notwithstanding any judicial allocation of any award in the Condemnation Proceedings, such award shall be paid to the Leasehold Mortgagee or the Unit Mortgagees, if they so request, or in the absence of a Leasehold Mortgagee, to the Insurance Trustee and shall be held by the Leasehold Mortgagee or the Unit Mortgagees, if they so request, or the Insurance Trustee, as the case may be, in the manner set forth in Article 14, but shall be made available to Lessee for restoration of the Premises as required pursuant to this Section 11.2 in accordance with the Leasehold Mortgage. The balance of any such award shall be divided between Lessor and Lessee in accordance with the damage to the value of their respective estates in the Premises determined as of the date title is vested in the condemning Governmental Authority, such damage to values to be agreed upon by the parties, or in the absence of such agreement, to be determined by appraisal pursuant to the provisions of Article 21.

11.3 **Condemnation for Limited Time.** (a) If, during the term of this Lease all or any portion of the Premises shall be taken for occupancy by any Governmental Authority for a limited period of time, this Lease shall not terminate but shall continue in full force and effect for the remainder of the stated term, and Lessee shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed under this Lease as though such taking had not occurred, except only to the extent that it may be prevented from doing so by reason of such taking and in no event shall the Rent and all other sums and charges required to be paid by Lessee under this Lease exceed the amounts received by Lessee from the condemning Governmental Authority.

(b) Notwithstanding any judicial allocation of any award made in the Condemnation Proceedings, Lessor hereby assigns such award to Lessee and Lessee shall be entitled to receive the entire amount of any award made for such taking (whether paid by way of damages, rent or otherwise; provided, however, where the award is not to be paid as rent in substantially equal installments over the period of such Governmental Authority's occupancy, Lessor may require Lessee to deposit all or a

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portion of the award with Lessor to be applied against Rent as it accrues hereunder) unless the period of such Governmental Authority's occupancy extends beyond the Expiration Date, in which case the award shall be divided between Lessor and Lessee so that Lessor shall receive an amount equal to the sum of that portion of the award, if any, that represents the cost of restoring the Premises at the termination of any such Governmental Authority's occupancy, plus the portion of such award attributable to the period of such occupancy that will extend beyond the Expiration Date and Lessee shall receive the balance of such award. In the event the Termination Date shall occur after any apportionment of the award made hereunder, but prior to the Expiration Date, the award shall be reapportioned as of the Termination Date in accordance with the provisions of this Section 11.3 as though the Expiration Date had occurred as of the Termination Date, and Lessee shall, promptly on demand, make any payment to Lessor required to effect such reapportionment, which obligation shall continue in full force and effect, until satisfied in full, regardless of the termination of this Lease.

(c) At the termination of any such Governmental Authority's occupancy, Lessee shall, at its sole cost and expense, promptly (subject to Unavoidable Delays) restore the Premises as nearly as may be reasonably possible to its value and its general condition and character immediately prior to such taking, ordinary wear and tear excepted, but Lessee shall not be required to perform such restoration work if the Expiration Date shall occur on or prior to the date such occupancy is terminated or if the date on which such Governmental Authority's occupancy is terminated shall occur less than two Lease Years prior to the Expiration Date.

11.4 Allocation of Lessee's Portions of Award; Homeowners Association as Representative of Unit Owners. If at the time of any Condemnation Proceeding, Lessee shall consist of more than one person or entity, Lessee's share of any award made in such Condemnation Proceeding (as determined pursuant to this Article 11) shall be allocated among those of the person or persons and entity or entities that together comprise Lessee and whose property has been taken as part of such Condemnation Proceeding in accordance with the value of their respective estates in the Premises determined as of the date title is vested in the condemning Governmental Authority, subject to the provisions of Section 11.2(b). Any such allocation to a Unit Owner shall be paid to the Homeowners Association for distribution and application in accordance with the provisions of the Declaration. The Homeowners Association shall represent the Unit Owners in that portion of any Condemnation Proceeding or in negotiations, settlements and agreements with the condemning Governmental Authority and with Lessor in any Condemnation Proceeding with respect solely to the Residential Project.

11.5 Disputes. Disputes arising under this Article 11 shall be determined by arbitration pursuant to Article 20.

## ARTICLE 12

### Damage and Restoration

12.1 Damage Requiring Restoration by Lessee. Except as otherwise provided in Section 12.3, if less than 50% of the Project shall be damaged or destroyed by a Casualty (regardless of the amount of the loss or the existence of insurance to cover such loss), or if 50% or more of the Project shall be damaged or destroyed by a Casualty and the proceeds of any applicable insurance shall be sufficient to pay the costs of Restoration, as reasonably estimated by Lessee as promptly as practicable

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after the date of the Casualty, Lessee shall cause the Restoration of the Project and any other portion of the Premises destroyed by such Casualty to be completed as soon as is reasonably practicable; provided, however, that if 50% or more of the Project shall be damaged or destroyed by a Casualty and if Restoration of the Project cannot be performed because of a legal prohibition, then Lessee may, at its option, terminate this Lease by notice to Lessor, whereupon all rights and obligations hereunder shall cease and Lessee shall promptly remove, at its sole cost and expense, any and all debris from the Premises (including removal and demolition of the substantially damaged Buildings and Improvements, and filling all excavations and returning the surface to grade), and the balance of any insurance proceeds after such removal and filling shall be disbursed in the manner set forth in Section 12.5(b).

**12.2 Damage Allowing Lessee an Option to Terminate; Lessor's Option to Require Restoration** (a) If 50% or more of the Project shall be damaged or destroyed by a Casualty caused by reasons other than the wilful misconduct of Lessee and if any applicable insurance proceeds are not sufficient to cover all costs of the Restoration, as reasonably estimated by Lessee as promptly as practicable after the date of such Casualty, then so long as there is no Event of Default with respect to Lessee's obligation to pay Rent, to maintain insurance as required pursuant to Article 8 or to satisfy any other monetary obligations of Lessee hereunder, Lessee shall have the right to terminate this Lease effective as of the date of the occurrence of the Casualty by giving notice to Lessor of its intent to terminate ("Termination Notice") within fifteen Days after Lessee so determines the estimated cost of the Restoration, which Termination Notice shall state Lessee's estimate of the cost of the Restoration and the amount of available insurance proceeds. The Termination Notice shall not become effective to terminate this Lease unless Lessee also provides to Lessor (i) such other information and documentation to support Lessee's estimate of the cost of the Restoration as Lessor may reasonably request within fifteen Days after delivery of Lessee's Termination Notice and (ii) any Leasehold Mortgagee consents in writing to such termination prior to the delivery of the Termination Notice, which written consent must accompany the Termination Notice. If Lessee elects to terminate this Lease pursuant to this Section 12.2(a), Lessor may, notwithstanding Lessee's Termination Notice, elect to continue this Lease in full force and effect and thereby to require Lessee to complete the Restoration by (i) giving notice to Lessee to such effect within thirty Days after delivery of Lessee's Termination Notice or within thirty Days of the date on which Lessee provides Lessor with such other information and documentation as was requested by Lessor, whichever is later, and (ii) either (A) depositing with the Insurance Trustee within such thirty Day period the difference between the estimated cost of the Restoration and the proceeds of insurance then on deposit with the Insurance Trustee or (B) providing Lessee with reasonable evidence of the availability of additional funds to cover such excess cost, which funds shall be made available to Lessee from time to time during the course of the Restoration, but not more frequently than monthly and in no greater amount than the proportion that the cost of the Restoration in excess of available insurance proceeds bears to the most recent estimate of the total cost of the Restoration. During the course of the Restoration, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that there has not been filed with respect to the Premises any mechanics' or other lien for any work, labor, services or materials performed, furnished or supplied in connection with the Restoration that has not been discharged of record.

(b) If Lessee gives a Termination Notice to Lessor within the time period provided herein and if Lessor does not elect to contribute toward the cost of Restoration as provided in Section 12.2(a) and thereby continue this Lease in full force and effect, the Termination Date shall be as of the date of the occurrence of the Casualty that gave rise to Lessee's right to give the Termination

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Notice and all Rent and other amounts payable by Lessee under this Lease shall abate as of the date of the occurrence of the Casualty. Notwithstanding the foregoing, Lessor shall have the right to require, by notice to Lessee, given within sixty Days of the receipt of Lessee's Termination Notice, that Lessee clear the Premises and remove any substantially damaged Building, Improvements and all debris, to the extent that insurance proceeds are available for such purpose. The duty to remove debris imposed upon Lessee hereunder includes, but is not limited to, the duty to demolish and remove the Building and Improvements, including all basements and foundations, to fill all excavations, to return the surface to grade, and to leave the Premises safe and free from debris and hazards, or such lesser degree of removal as is requested by Lessor. Notwithstanding Lessee's election to terminate the Lease, all obligations of Lessee arising or occurring pursuant to this Lease prior to the Termination Date or under this Section 12.2(b) shall continue in full force and effect, until satisfied in full, regardless of the exact Termination Date and the termination or expiration of the Lease itself.

**12.3 Damage Allowing Lessee an Option to Terminate.** If at any time after the one hundred forty-fifth Lease Year, the Building shall, by reason of a Casualty, be completely destroyed or so substantially damaged (as reasonably determined by Lessor and Lessee and without regard to the availability of insurance proceeds to cover such loss) as to require demolition to the foundations, then in the event no Event of Default exists at the time of giving the notice hereinafter referred to with respect to Lessee's obligation to pay Rent, to maintain insurance as required pursuant to Article 8 or to satisfy any other monetary obligations of Lessee hereunder, Lessee shall have the option to terminate this Lease by written notice to Lessor given within sixty Days after the date of occurrence of the Casualty. Upon the exercise of such an option, the Termination Date shall be as of the date of the occurrence of the Casualty that gave rise to the option, and all Rent and other amounts payable by Lessee under this Lease shall abate as of the date of occurrence of the Casualty. Lessor shall, nevertheless, have the right to require that Lessee, by notice to Lessee given within twenty-five Days of the date of the Casualty, clear the Premises and remove all debris, to the extent that insurance proceeds are available for such purpose. The duty to remove debris imposed upon Lessee hereunder includes, but is not limited to, the duties to demolish and remove any substantially damaged Building and Improvements, including all basements and foundations, to fill all excavations, to return the surface to grade, and to leave the Premises safe and free from debris and hazards, or to perform such lesser degree of removal as is requested by Lessor. Notwithstanding any election to terminate this Lease pursuant to this Section 12.3, all obligations of Lessee arising or occurring pursuant to this Lease prior to the Termination Date or under this Section 12.3 shall continue in full force and effect, until satisfied in full regardless of the exact Termination Date and the termination or expiration of the Lease itself.

**12.4 Procedures for Restoration.** Lessee shall promptly commence any Restoration required to be done by Lessee pursuant to this Article 12 and shall diligently pursue the same to completion, subject to a reasonable allowance for the time needed to adjust any insurance claims and to Unavoidable Delays. Before Lessee shall commence the Restoration or let any contracts therefor, and at all times during the course of the Restoration, Lessee shall comply with the applicable provisions of Article 13. In addition, at all times Lessee shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed under this Lease notwithstanding any loss, damage or destruction, except for temporary suspension of performance rendered impossible by such loss, damage or destruction.

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12.5 Application of Insurance Proceeds. (a) Insurance proceeds paid to the Insurance Trustee on account of any loss, damage or destruction due to a Casualty shall be used, unless this Lease is terminated pursuant to Section 12.2 or Section 12.3, to pay the cost of the Restoration and shall, subject to the provisions of Section 8.7, be disbursed for such purpose by the Insurance Trustee from time to time as the Restoration progresses, upon request by Lessee, accompanied by such affidavits, certificates, waivers, releases and other proofs as may be reasonably required by such Insurance Trustee. If at the time of any such request by Lessee the estimated cost to complete the Restoration, lien-free and ready for use, as reasonably determined by Lessor, is in excess of any insurance proceeds then held by the Insurance Trustee, Lessor may direct the Insurance Trustee to cease making any further disbursements on account of the Restoration until Lessee shall have provided Lessor with either a cash deposit or reasonable evidence of the availability of additional funds to cover such excess and guarantees of completion of the Restoration reasonably acceptable to Lessor. Costs of administering such disbursement procedure shall be paid out of the funds on deposit with the Insurance Trustee. When the Restoration has been completed and paid for and it appears to the Insurance Trustee's satisfaction that no liens can attach to the Premises or the Building as a result of the Restoration, all insurance proceeds and the funds of Lessee then remaining in the Insurance Trustee's hands shall, except as otherwise provided in Section 14.3, be promptly paid to Lessee or to Lessor (in the case of any Restoration pursuant to Section 12.2 after an election by Lessor to continue this Lease, but only to the extent of any funds expended or deposited by Lessor pursuant to Section 12.2 plus interest at the Lease Interest Rate from the date such funds were so expended or deposited).

(b) If this Lease is terminated pursuant to Section 12.2, any insurance proceeds paid to the Insurance Trustee on account of any loss, damage or destruction due to a Casualty shall be distributed first to pay the indebtedness secured by any Leasehold Mortgage as the interests of any such Leasehold Mortgagee may appear. If there is no Leasehold Mortgage then in existence but there is more than one Unit Mortgage then in existence, such proceeds shall be distributed equally to all Unit Mortgagees. If and to the extent requested by Lessor and not otherwise covered by separate insurance maintained by Lessee to cover demolition of the Project and removal of all debris, the balance of such proceeds shall be used for such demolition, clearance and removal (as provided in Section 12.2), and any remaining proceeds shall be divided between Lessor and Lessee in accordance with the value of their respective estates in the Premises determined as of the date of the Casualty (Lessee's pro rata share to be reduced by the amount paid to any Leasehold Mortgagee), but without regard to the termination of this Lease, the values of Lessor's and Lessee's estates to be agreed upon by the parties, or in the absence of such agreement, to be determined pursuant to Article 20 or by appraisal pursuant to the provisions of Article 21, as applicable.

(c) If this Lease is terminated pursuant to Section 12.3, any insurance proceeds paid to the Insurance Trustee on account of any loss, damage or destruction due to a Casualty shall be used, first to clear the Premises and to remove all debris (as provided in said Section 12.3) if and to the extent requested by Lessor, and then to repay any Leasehold Mortgagee or Unit Mortgagee for the indebtedness secured by such Leasehold Mortgagee's Leasehold Mortgage or such Unit Mortgagees' Unit Mortgages. Thereafter any remaining proceeds shall be divided between Lessor and Lessee in accordance with the value of their respective estates in the Premises determined as of the date of the Casualty (Lessee's pro rata share to be reduced by the amount paid to any Leasehold Mortgagee), but without regard to the termination of this Lease, the values of Lessor's and Lessee's estates to be agreed upon by the parties, or in the absence of such agreement, to be determined pursuant to the provisions of Article 21.

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12.6 Decisions of Lessee. Notwithstanding anything to the contrary contained in this Lease, until the date that Initial Lessee has assigned all of its interest under this Lease (other than to an Affiliate) and has no interest in the leasehold estate created hereby, Initial Lessee shall be entitled to make all decisions of Lessee pursuant to this Article 12, and Initial Lessee shall be entitled to receive insurance proceeds in accordance with this Article 12, and no consent of, or request by, Lessee as to the termination of this Lease pursuant to this Article 12 may be made without the prior written consent of both Initial Lessee and any Leasehold Mortgagee, which consent of Initial Lessee may be withheld or conditioned in Initial Lessee's sole and absolute discretion; provided, however, that the Homeowners Association may make such decisions (except for any decision concerning the termination of this Lease) solely with respect to a Casualty limited solely to the Residential Project. From and after the date of the recording of the Declaration, the Homeowners Association shall be solely responsible for any Restoration obligations of Lessee with respect to the Residential Project. Notwithstanding anything to the contrary contained in this Lease, if at the time any insurance proceeds are to be made available to Lessee pursuant to this Article 12 (i) there is any Leasehold Mortgage in effect and (ii) there is then existing an event of default under such Leasehold Mortgage, then provided such Leasehold Mortgagee agrees in writing to use such insurance proceeds strictly in accordance with this Article 12, such insurance proceeds shall be made available to such Leasehold Mortgagee in the same manner as such insurance proceeds would have been made available to Lessee pursuant to this Article 12.

12.7 Disputes. Disputes arising under this Article 12 shall be determined by arbitration pursuant to Article 20 or by appraisal pursuant to Article 21.

## ARTICLE 13

### Changes and Alterations

13.1 Conditions Governing Changes and Alterations. Lessee, the Homeowners Association and the Unit Owners each shall have the right at any time and from time to time during the term of this Lease to make or perform such repairs, maintenance, replacements, renewals, additions, betterments, changes and alterations (including any Restoration or other restoration work required or permitted under Article 11 or Article 12), structural or otherwise, to the Building or Improvements as Lessee, the Homeowners Association and the Unit Owners each shall deem necessary or desirable to maintain the Building and Improvements as a first-class residential development or as may be required by Lessor under this Lease (all of the foregoing are collectively referred to herein as "Changes and Alterations" or any one of which is individually referred to herein as a "Change or Alteration"), subject to the following covenants and conditions that Lessee shall observe and perform:

(a) The Homeowners Association shall not undertake or commence or permit or suffer any Unit Owner to undertake or commence any Change or Alteration until such Unit Owner shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all Governmental Authorities having jurisdiction. Lessor agrees to join in the application for such permits or authorizations whenever such action is necessary.

(b) The Homeowners Association shall not undertake or commence or permit or suffer any Unit Owner to undertake or commence (i) any structural Change or Alteration, or (ii) any

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Change or Alteration that would constitute a material Change or Alteration in or to the nature, size, exterior appearance, use or character of any Building or Improvements (any such Change or Alteration referred to in clause (i) through (ii) being referred to as a "Major Change") without in any such case first obtaining the prior written approval by Lessor of the plans and specifications for such Change or Alteration, which approval shall not be unreasonably withheld, except that in the case of a Change or Alteration to the exterior appearance of the Buildings or Improvements, Lessor's approval may be withheld in Lessor's sole and absolute discretion. Except as provided in the preceding sentence, Lessor's consent shall not be required for any Change or Alteration that Lessee, the Homeowners Association or any Unit Owner may elect to undertake. If Lessor's consent or approval to any Change or Alteration is required hereunder, Lessor shall use reasonable efforts to deliver to Lessee within sixty Days after receipt of Lessee's request for such approval notice of either (A) Lessor's approval of such Change or Alteration or (B) Lessor's disapproval of such Change or Alteration accompanied by a reasonably detailed written statement of Lessor's reasons therefor. If Lessor does not approve such Change or Alteration and Lessee still desires to undertake such Change or Alteration, Lessee shall as promptly as practicable after receipt of any notice of disapproval revise and resubmit such request to Lessor. Lessor shall examine such revised request and, within sixty Days after receipt of the same, shall use reasonable efforts to deliver to Lessee notice of either (x) Lessor's approval of the revised request or (y) Lessor's disapproval of the revised request, accompanied by a reasonable detailed written statement of Lessor's reasons therefor. Lessor's failure to provide notice of approval or disapproval of any request within sixty Days after Lessor's receipt of such request or revised request shall be deemed to be Lessor's disapproval of such request.

(c) All work shall be completed promptly and in a good and workmanlike manner and shall be conducted at all times in compliance with (i) all applicable building and zoning codes or laws of the place in which the Premises are located, (ii) all laws, ordinances, codes, orders, rules, regulations and requirements of all Governmental Authorities, and (iii) the National Fire Protection Association Life Safety Code 101 as from time to time in effect and made applicable to the Project by ordinance of the Village (or any replacements thereof or substitutions therefor).

(d) The cost of any such work shall be paid reasonably promptly so that the Premises and the Buildings and Improvements, including Lessor's Estate therein, shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises.

(e) The Homeowners Association shall cause all contractor to maintain worker's compensation insurance and all other insurance customary for similar types of construction contracts and covering all potential claimants, including (but not limited to) all persons employed in connection with the work with respect to whom death or injury claims could be asserted against Lessor, Lessee or the Premises. All such insurance shall be issued by a company or companies, authorized to do business in the State of Illinois and satisfactory to Lessor, and if requested by Lessor, true and correct copies of such policies, certified by the respective insurer, shall be delivered to Lessor, together with evidence of payment of the premiums reasonably satisfactory to Lessor.

(f) For the purposes of assuring Lessee's compliance with the terms of this Lease, Lessor or any architect, engineer or other representative whom Lessor may select to act for it shall be permitted, at Lessor's sole cost and expense, to inspect the work at any reasonable time upon reasonable notice to Lessee during the course of construction of the work and upon completion thereof. No inspec-

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tions made by any such architect, engineer or representative of Lessor and no inspection or approval by any such architect, engineer or representative of Lessor of any designs, plans, drawings, specifications or contracts for or with respect to the work or any materials or labor to be supplied in connection with the work by Lessee, its employees, agents, contractors or subcontractors shall be deemed or construed in any way as relieving or modifying Lessee's obligation to complete the work in accordance with the requirements set forth in this Article 13, and Lessor shall not thereby or otherwise be deemed or construed in any way to have assumed any responsibility or liability for the work or the safety, adequacy, sufficiency, legality or otherwise of the work or the manner in which the work is conducted or completed, all of which responsibility and liability shall be and remain that of Lessee.

(g) During the prosecution of the work the Homeowners Association and the Unit Owners shall comply with the requirements of Section 8.1 and Article 9, to the extent the same are applicable to the work.

(h) If Lessee receives notice that any excavation or other building operation is about to be made or shall be made upon any adjoining property, street or alley, Lessee shall, at its sole cost and expense, to the extent required by applicable law, shore or cause to be shored the foundations and walls of the Building and Improvements and do all other acts or things necessary for the safety and preservation of the Premises. Except to the extent required by law, Lessor shall not be liable for any inconvenience, annoyance, disturbance, cost, loss of business or other damage arising from any such excavation or building operation and Lessee's obligations hereunder shall not thereby be affected. In addition, if any excavation or other building operation is about to be made or is made upon the Premises, Lessee shall, at its sole cost and expense, assume all obligations imposed by law on the owner and occupant of the Premises, or either thereof, to protect such adjoining property and buildings and structures thereon from damage, and shall do all acts and things necessary for the safety or preservation of the adjoining property and the buildings and structures thereon and to prevent any claims or liens against Lessor or Lessor's Estate.

(i) The Homeowners Association hereby covenants and agrees that it shall promptly pay all architects, engineers or any other persons who prepare any drawings, plans or specifications on behalf of the Homeowners Association (each such person a "Design Professional" and collectively, the "Design Professionals"). The Homeowners Association agrees that it shall cause any Unit Owner who has any drawings, plans or specifications prepared on behalf of such Unit Owner to promptly pay all Design Professionals who prepare such drawings, plans or specifications. The Homeowners Association further covenants and agrees that it will indemnify and hold harmless Lessor, Lessor's Beneficiary, any transferee or assignee of Lessor or Lessor's Beneficiary, and (except with respect to drawings, plans or specifications prepared for any Unit Owner) any Unit Owner and any transferee or assignee of any Unit Owner from any claim made by any Design Professional for payment for the preparation of any such drawings, plans or specifications. Lessee shall take whatever actions are necessary to ensure that upon payment in full to any Design Professional for such Design Professional's services in preparing any drawings, plans or specifications the Homeowners Association or the Unit Owner shall have possession of such drawings, plans or specifications and the right to use such drawings, plans and specifications solely in connection with such Changes and Alterations and upon the first to occur of the Termination Date or the Expiration Date, Lessor shall have the right to possession and use of all such drawings, plans or specifications solely in connection with the Project without any act or the recording of any instrument or the part of Lessor or Lessee.

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13.2 Changes and Alterations Constitute a Part of Premises. At all times during the course of any work in connection with any Changes and Alterations that are made or installed by Lessee in or on the Premises, such work shall immediately be and become a part of the Premises but shall remain the property of Lessee (subject to the terms of this Lease and except as otherwise provided in this Lease) but upon the first to occur of the Termination Date or Expiration Date, title to all Changes and Alterations shall vest in Lessor without any act on the part of or the recording of any instrument by Lessor or Lessee.

13.3 Inspections or Approvals by Lessor. No inspection made by any architect, engineer or other representative of Lessor and no inspection or approval by any such architect, engineer or other representative of any designs, plans, drawings, specifications or contracts for or with respect to any work contemplated pursuant thereto or the method of performing any work or any materials or labor to be supplied in connection therewith by Lessee, its employees, agents, contractors or subcontractors shall be deemed or construed in any way as relieving Lessee from or modifying Lessee's obligation to complete such work in accordance with the applicable requirements set forth in this Article 13, and Lessor shall not thereby or otherwise be deemed or construed in any way to have assumed any responsibility or liability for such work or the safety, adequacy, sufficiency, legality or otherwise of such work or the manner in which such work is conducted or completed, all of which responsibility and liability shall be and remain that of Lessee.

13.4 Application to Work. The provisions of this Article 13 shall not apply to the Work.

13.5 Not Applicable to Work Within Units. Notwithstanding anything to the contrary contained in this Lease, the provisions of this Article 13 shall not be applicable to any work performed by or on behalf of a Unit Owner within such Unit Owner's Unit or by or on behalf of the Homeowners Association as part of usual and customary repairs, maintenance and upkeep of the Premises, the Buildings or the Improvements.

## ARTICLE 14

### Deposited Funds; Interest

14.1 Interest on Deposited Funds. Funds deposited by Lessee with Lessor under any provision of this Lease shall be invested, as Lessor may direct, in either United States government securities or federally insured money market funds or certificates of deposit. At the time of the repayment or application of such funds, any interest paid on such deposit or earned on such investment shall be paid to Lessee or applied by Lessor if and to the extent necessary to satisfy Lessee's obligations under this Lease.

14.2 Funds Held in Trust. Whenever any funds are to be paid to or deposited with Lessor pursuant to Articles 8, 11, 12 or 13, such funds shall be held by the Leasehold Mortgagee or the Unit Mortgagees, if and to the extent required by any Leasehold Mortgage and any Unit Mortgage. In the absence of any such Leasehold Mortgagee and any Unit Mortgagee or any requirement by such Leasehold Mortgagee or any Unit Mortgagee that it is to hold such funds, Lessor may elect to have such funds paid to a corporate trustee selected by Lessor (and whose identity is reasonably satisfactory to

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