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730 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS

EASEMENT AND OPERATING
AGREEMENT

Property of Cook County Clerk's Office

This instrument prepared by and
after recording return to:

Mr. Andrew Small
Katten Muchin & Zavis
525 West Monroe Street
21st Floor
Chicago, Illinois 60661

N 9600064 and N 9701209
Cash Co, Inc

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EXHIBITS

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LIST OF EXHIBITS TO
730 NORTH MICHIGAN AVENUE,
CHICAGO, ILLINOIS
EASEMENT AND OPERATING AGREEMENT

EXHIBIT
LETTER OR

TITLE OR DESCRIPTION

A-1	Legal Description of Retail Fee Parcel
A-2	Legal Description of Stern Fee Estate
A-3	Legal Description of Chicago Avenue Fee Estate
B-1	Legal Description of Hotel Fee Parcel
B-2	Legal Description of Hotel Leased Parcel
C	[RESERVED]
D	Hotel Building Plans
E	{RESERVED}
F	Retail Building Plans
2.9	Rules and Regulations for Loading Dock
2.10	Rules and Regulations for the Mechanical Rooms
3.10.1	Retail Exclusive Easement Premises
3.10.2	Retail Exclusive Easement Facilities
3.13	Rules and Regulations for Service Elevators
5.1(a)	Location of Hotel Landscaping and Snow Removal Areas
5.3	Allocation of Charges for Maintenance
5.10(b)	Hotel Chilled Water Facilities
6.9	Restricted Retail Facade
14.1(d)	Description of Loading Dock Area Facade
22.1	Allocation of Costs of Constructing Interstitial Floor

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730 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS

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EASEMENT AND OPERATING AGREEMENT

THIS EASEMENT AND OPERATING AGREEMENT ("Agreement") is made and entered into as of the 30 day of June 1999 by and between American National Bank and Trust Company of Chicago, not personally but solely as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01 (the "Existing Retail Owner") and (ii) Peninsula Chicago LLC, a Delaware limited liability company (the "Existing Hotel Owner").

RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, have the meanings set forth in Article 1 hereof.

B. The Existing Retail Owner is (i) the record legal title holder of the land and certain air rights legally described on Exhibit A-1 attached hereto and made a part hereof (the "Retail Fee Parcel"), (ii) the lessee of certain land and air rights legally described on Exhibit A-2 attached hereto and made a part hereof (the "Stern Fee Estate"), pursuant to a certain Agreement to Lease dated as of May 10, 1994 (the "Stern Ground Lease") by and between Robert L. Stern, an individual residing in the State of California, as landlord (the "Stern Ground Lessor") and the Existing Retail Owner, as tenant, (iii) the lessee of certain land and air rights legally described on Exhibit A-3 attached hereto and made a part hereof (the "Chicago Avenue Fee Estate"), pursuant to a certain Agreement to Lease dated as of January 1, 1996 (the "Chicago Avenue Ground Lease") by and between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated December 19, 1979 and known as Trust No. 4866208, as landlord (the "Chicago Avenue Ground Lessor"), and the Existing Retail Owner, as tenant (the real estate referred to in clauses (i), (ii) and (iii) above, exclusive of the air rights subleased pursuant to the Sublease and any Hotel Exclusive Easement Premises which may be hereafter owned by the Hotel Owner, is sometimes referred to herein collectively as the "Retail Parcel") and (iv) the record legal title holder (subject, as the case may be, to the Stern Ground Lease and the Chicago Avenue Ground Lease) of the Retail Building. The Person or Persons (excluding occupants or tenants and, unless the same take title thereto, the holders of any mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Retail Fee Parcel and the Retail Building and leasehold ownership of the Stern Fee Estate and the Chicago Avenue Fee Estate (together, the "Retail Leasehold Parcel") (or, as the case may be, fee ownership of either or both of the Stern Fee Estate and/or the Chicago

Avenue Fee Estate, if fee ownership of either or both of such parcels shall later be acquired by the owner of the Retail Fee Parcel), are hereinafter collectively referred to as the "Retail Owner." Currently, the Retail Owner is the Existing Retail Owner. It is the intent of the parties hereto that the Stern Ground Lessor and the Chicago Avenue Ground Lessor shall not be included in the definition of "Retail Owner" by virtue of such Persons respective ownership of the Stern Fee Estate and the Chicago Avenue Fee Estate.

C. The Existing Hotel Owner (i) is the record legal title holder of those parcels of land and air rights (the "Hotel Fee Parcel") situated in the City of Chicago, County of Cook, State of Illinois, legally described on Exhibit B-1 attached hereto and made a part hereof and (ii) is the sub-lessee of those parcels of real estate (the "Hotel Leased Parcel") consisting of certain air rights legally described on Exhibit B-2 attached hereto and made a part hereof, pursuant to two separate Subleases, one dated January 29, 1999 and one dated as of the date hereof (collectively, the "Sublease"), between the Existing Retail Owner, as sublessor, and the Existing Hotel Owner, as sublessee, memorandums of which are intended to be recorded concurrently herewith in the office of the Recorder of Deeds of Cook County, Illinois, and (iii) will be the record legal title holder of the Hotel Building to be constructed on the Hotel Fee Parcel and the Hotel Leased Parcel. The Hotel Fee Parcel and the Hotel Leased Parcel are sometimes referred to herein together as the "Hotel Parcel". The Person or Persons (excluding occupants or tenants and, unless the same take title thereto, the holders of any mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Hotel Fee Parcel and the Hotel Building and sub-lessee ownership of the Hotel Leased Parcel (or, as the case may be, fee ownership of the Hotel Leased Parcel, if fee ownership of the Hotel Leased Parcel shall later be acquired by the owner of the Hotel Fee Parcel) are hereinafter collectively referred to as the "Hotel Owner." Currently the Hotel Owner is the Existing Hotel Owner. It is the intent of the parties hereto that the Stern Ground Lessor and the Chicago Avenue Ground Lessor shall not be included in the definition of "Hotel Owner" by virtue of such Person's ownership of the Stern Fee Estate.

D. The Retail Parcel and the Hotel Parcel together comprise the Project Site which consists of real estate in the City of Chicago, County of Cook, State of Illinois, bounded by Michigan Avenue, Chicago Avenue, Rush Street and Superior Street.

E. The Retail Owner has constructed within the Retail Parcel a building (the "Retail Building"). The Retail Building and the Hotel Building described below, are sometimes referred to herein collectively as the "Building." The building to be constructed on the Hotel Parcel (the "Hotel Building"), if constructed, shall be constructed by the Hotel Owner substantially in accordance with the plans and specifications described in Exhibit D attached hereto, as amended from time to time in accordance herewith (the "Hotel Building Plans") and will include other improvements and facilities described in the Hotel Building Plans. The Hotel Building shall be located over, and shall be supported by, the Retail Building.

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F. Neither the Retail Building nor the Hotel Building is or will be structurally or functionally entirely independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Retail Building and the Hotel Building.

G. The Owners desire by this Agreement to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship among the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by creating (i) certain easements, covenants and restrictions against and affecting the Hotel Property which will be binding upon Owners of the Hotel Property, or any portion thereof or interest or estate therein, and which will inure to the benefit of Owners of the Retail Property, or of any portion thereof or interest or estate therein, and (ii) certain easements, covenants and restrictions against and affecting the Retail Property, which will be binding upon Owners of the Retail Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of Owners of the Hotel Property, or of any portion thereof or interest or estate therein.

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NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is hereby agreed as follows:

ARTICLE 1.

DEFINITIONS

1.1 **Definitions.** Whenever used in this Agreement, the following terms shall have the respective meanings specified below:

AFFECTED OWNER - As defined in Section 9.4.

AGREEMENT - This Easement and Operating Agreement, together with all Exhibits, amendments and supplements hereto.

ALTERATIONS - As defined in Section 14.1(a).

ALTERING OWNER - As defined in Section 14.1(a).

ARBITRABLE DISPUTE - Any dispute arising under this Agreement which is expressly made subject to arbitration under the provisions of Article 11 hereof or designated as an Arbitrable Dispute.

ARCHITECT - An architect or structural engineer licensed in Illinois and experienced in highrise construction utilizing similar structural systems as that used in the Building.

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ARCHITECT'S CERTIFICATE - As defined in Section 17.1.

AWARD - As defined in Section 13.1.

BUILDING - A collective reference to the Retail Building, the Hotel Building and any other improvements located on the Project Site.

BUSINESS DAY - Those days that banks and government offices are open for business in Illinois, New York and Hong Kong.

CHICAGO AVENUE FEE ESTATE - The fee ownership interest of the Chicago Avenue Ground Lessor in the property legally described in **Exhibit A-3** attached hereto.

CHICAGO AVENUE GROUND LEASE - As defined in Recital B.

CHICAGO AVENUE GROUND LESSOR - As defined in Recital B.

CONSTRUCTION COORDINATION AGREEMENT - The Construction Coordination Agreement between the Retail Owner and the Hotel Owner dated as of January 29, 1999.

CREDITOR OWNER - An Owner (A) to whom payment of money or other duty or obligation is owed under this Agreement by another Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder, or (B) who has exercised any self-help remedy provided for in this Agreement.

DEFAULTING OWNER - An Owner who has failed to perform any of its duties or obligations as and when required under this Agreement or to make payment of money owed under this Agreement to another Owner, after the expiration of applicable grace, notice or cure periods.

DEPOSITARY - The person or entity from time to time acting pursuant to Article 16.

EASEMENTS - A collective reference to any and all easements provided for, declared, granted, reserved or created pursuant to the terms and provisions of this Agreement (and including easements provided for in this Agreement which are reserved or granted by deed).

EMERGENCY SITUATION - A situation impairing or imminently likely to impair Structural Support of the Building or any portion thereof or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Building, any portion thereof or any property in, on, under, within, upon or about the Building or substantial economic loss to either Owner. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

ESTOPPEL CERTIFICATE - As defined in Section 15.1.

FACILITIES - Any annunciators, antennae, boxes, brackets, cabinets, cables (electric, fibre optic or otherwise), circulation equipment, communications equipment, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, alarm and security, cleaning, communication, data transmission, electric, elevator, emergency information, exhaust, fire safety, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, telephone, television, transportation, water service, ventilating and air conditioning equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, and the like used in providing services from time to time in any part of the Building, and any replacements thereof.

FIRST MORTGAGE - As defined in Section 20.11(a).

HOTEL - any hotel, residential, office or mixed use project (including related Facilities), together with ancillary retail, restaurant and health club uses operated from time to time in all or any portion of the Hotel Building and the Hotel Exclusive Easement Premises in accordance with and as permitted pursuant to the Hotel Operating Standard, to the extent applicable.

HOTEL BUILDING - As defined in Recital E.

HOTEL BUILDING PLANS - As defined in Recital E.

HOTEL EXCLUSIVE EASEMENT IMPROVEMENTS - Any improvements (including Facilities and furniture, furnishings and equipment) installed by (or on behalf of) the Hotel Owner within the Hotel Exclusive Easement Premises. The Retail Owner shall have no ownership interest in the Hotel Exclusive Easement Improvements.

HOTEL EXCLUSIVE EASEMENT PREMISES - As defined in Section 2.2 hereof.

HOTEL EXTERIOR ELEMENTS - The facade of the Hotel Building and all signs, canopies, flagpoles and other exterior or decorative elements of the Hotel Building, including any Facilities, furniture or fixtures or any other exterior items, decorations, planters, landscaping, lights, etc.

HOTEL FEE PARCEL - As defined in Recital C and as legally described in **Exhibit B-1**.

HOTEL LEASED PARCEL - As defined in Recital C and as legally described in **Exhibit B-2**.

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HOTEL OPERATING STANDARD - The standard of construction, operation, management, Maintenance and services consistent with an first class hotel, or, if following the Construction of the Hotel Building in accordance with the Hotel Building Plans, the use of the Hotel is converted to office or residential use, the standard of construction, operation, management, Maintenance and services consistent with a first-class office or residential project, as the case may be.

HOTEL OWNED FACILITIES - Facilities owned by the Hotel Owner and located in easements within the Retail Property and/or the Hotel Parcel.

HOTEL OWNER - As defined in Recital C.

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HOTEL PARCEL - As defined in Recital C and as legally described in Exhibit B-1 and Exhibit B-2, collectively.

HOTEL PROPERTY - The Hotel Parcel improved with the Hotel Building.

HOTEL RISER SHAFT - As defined in Section 2.2(b) hereof.

IMPACTED OWNERS - As defined in Section 6.2.

IMPOSITIONS - All taxes and other governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against the Property, Project Site or Building, the improvements located therein, or any part thereof or any interest therein, including, without limiting the generality of the foregoing, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments, any taxes levied or a charge upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an Owner therein and all ad valorem taxes lawfully assessed upon the Property, Project Site, the Building or the improvements located therein, or any part of any of the foregoing.

INDEMNIFYING OWNER - As defined in Section 6.1(a).

INDEMNITEE - As defined in Section 6.1(a).

LAW OR LAWS - All laws, statutes, codes, acts, ordinances, orders, judgments, rulings, decisions, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Building, the Project Site or any parts thereof.

LIENING OWNER - As defined in Section 6.2.

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MAINTENANCE - Operation, maintenance, repair, reconditioning, refurbishing, inspection, testing, cleaning, painting, installation, restoration and replacement when necessary or desirable of the Building or any portion thereof (or attachment thereon), including the Hotel Building or any portion thereof (including the sidewalk, landscaping and underground vaults adjacent thereto), the Retail Building or any portion thereof, the Facilities, the Hotel Exclusive Easement Improvements, the Retail Exclusive Easement Improvements and includes the right of access to the Building and the right to remove from the Building all or any portion of such Facilities or such improvements, subject, however, to any limitations set forth elsewhere in this Agreement. As used in Article 5 and Exhibits thereto, Maintenance excludes obligations for which another Owner is responsible under Articles 4, 9 or 13, and Maintenance excludes providing electrical energy, communications signals, water or other utilities or services unless otherwise expressly provided.

MECHANIC'S LIEN ACT - As defined in Section 14.3.

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MORTGAGE - As defined in Section 20.11(a).

MORTGAGEE - As defined in Section 20.11(a).

OBJECTING PARTY - As defined in Section 14.1(e).

OWNED FACILITIES - A collective reference to Retail Owned Facilities and Hotel Owned Facilities.

OWNER(S) - The Hotel Owner or the Retail Owner, or both, as the context requires.

OWNER BUILDING AREA RATIO - As used in Section 4.3, the ratio from time to time of the total gross square foot area (including both above and below grade space) of the portion of the Building owned (including, for these purposes, areas in which an Owner has a leasehold interest pursuant to the Chicago Avenue Ground Lease or the Stern Ground Lease, as the case may be) by an Owner to the total gross square foot area (including both above and below grade space) of the Building. From time to time at the request of any Owner, the Owners shall confirm in writing, in recordable form, the Owner Building Area Ratios then in effect. For purposes of this definition, the total gross square foot area of the Hotel Owner shall include the square footage of the Hotel Exclusive Easement Premises and shall exclude square footage of the Retail Exclusive Easement Premises, and the total gross square foot area of the Retail Owner shall exclude the square footage of the Hotel Exclusive Easement Premises and shall include the square footage of the Retail Exclusive Easement Premises. Any dispute between the Owners regarding the Owner Building Area Ratio shall be an Arbitrable Dispute

PARCEL(S) - The Hotel Parcel or the Retail Parcel, or both.

PASSENGER ELEVATOR SHAFTS - Those passenger elevator shafts extending from the street level of the Retail Building vertically to the base of the fourth level of the Building and identified as Lot 4L on the Plat of Subdivision.

PERMITTEES - The Owners, all Persons entitled by lease or license to use or occupy space within the Building, and their respective beneficiaries, officers, directors, employees, agents, partners, members, shareholders, contractors, invitees and licensees.

PERSON - Individuals, partnerships, associations, limited liability companies, corporations, governmental entities, trusts, land trusts, and any other form of business or not-for-profit organization, or one or more of them.

PLANS - A collective reference to the Retail Building Plans and the Hotel Building Plans.

PLAT OF SUBDIVISION. That certain three dimensional plat of subdivision dated January 19, 1998 and last revised January 29, 1999 prepared by National Survey Service, Inc. as Job No. N-121038, which is recorded with the Office of the Recorder on _____, ____ as Document No. ____.

POLO AIR SPACE - The air rights lots described as Lots 6, 7 and 8A depicted on the Plat of Subdivision.

POLO EASEMENT AREAS - As defined in Section 3.15.

PRIOR LIEN - As defined in Section 10.1.

PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT - That certain Project Development and Management Agreement dated January 29, 1999 between Hotel Owner and Tower Summit L.L.C.

PROJECT SITE - A collective reference to the Hotel Parcel and the Retail Parcel.

PROPERTY - A collective reference to the Hotel Property and the Retail Property.

PURCHASE AND SALE AGREEMENT - That certain Purchase and Sale Agreement dated January 29, 1999 executed by Existing Retail Owner, 730 North Michigan Avenue Venture and Existing Hotel Owner.

RECORDER - The Recorder of Deeds of Cook County, Illinois.

RETAIL BUILDING - As defined in Recital E.

RETAIL BUILDING PLANS - The plans and specifications described on **Exhibit F** attached hereto, as amended from time to time.

RETAIL EXCLUSIVE EASEMENT IMPROVEMENTS - Any improvements (including Facilities and furniture, furnishings and equipment) installed by (or on behalf of) the Retail Owner within the Retail Exclusive Easement Premises. The Hotel Owner shall have no ownership interest in the Retail Exclusive Easement Improvements.

RETAIL EXCLUSIVE EASEMENT PREMISES - As defined in Section 3.10 herein below.

RETAIL EXHAUST SHAFT - As defined in Section 3.4 below.

RETAIL FEE PARCEL - As defined in Recital B and legally described on **Exhibit A-1**.

RETAIL LEASE/OLD PARCEL - As defined in Recital B and as described in **Exhibits A-2** and **Exhibit A-3** hereto.

RETAIL OPERATING STANDARD - The standard of operation, management, Maintenance and services of the Retail Property existing as of the date of this Agreement.

RETAIL OWNED FACILITIES - Facilities owned by the Retail Owner and located in easements within the Hotel Property or within the Retail Parcel.

RETAIL OWNER - As defined in Recital B.

RETAIL PARCEL - As defined in Recital B and as described in **Exhibit A-1**, **Exhibit A-2** and **Exhibit A-3**, collectively.

RETAIL PROPERTY - The Retail Parcel improved with the Retail Building.

SERVICE ELEVATOR SHAFTS - As defined in Section 2.2(a) below.

STERN FEE ESTATE - The fee ownership interest of the Stern Ground Lessor in the property legally described in **Exhibit A-2** attached hereto.

STERN GROUND LEASE - As defined in Recital B.

STERN GROUND LESSOR - As defined in Recital B.

STREET LEVEL HOTEL LOBBY - A street level hotel lobby on Superior Street and included within Lot 4A on the Plat of Subdivision.

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STRUCTURAL INTEGRITY - The ability of the Structural Support to adequately and safely support and provide structural support and integrity to the Building pursuant to commonly accepted engineering standards.

STRUCTURAL SUPPORT - All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Building.

SUBLEASE - As defined in Recital C.

UTILITY COMPANY - Any Person, including governmental bodies, furnishing water, electricity, sewer gas, steam, telephone, chilled water, communications, voice and data service, cable television service or other services or materials generally known as utilities.

1.2 **Construing Various Words and Phrases.**

(a) Wherever it is provided in this Agreement that a party "may" perform an act or do anything, it shall be construed that the party "may, but shall not be obligated to," so perform or so do. The following words and phrases shall be construed as follows: (i) "At any time" shall be construed as "at any time or from time to time;" (ii) "Any" shall be construed as "any and all;" (iii) "Including" shall be construed as "including but not limited to;" (iv) "Will" and "shall" shall each be construed as mandatory; and (v) The word "in" with respect to an Easement granted or reserved "in" a particular Parcel shall mean "in," "to," "over," "within," "through," "upon," "across," "under," and any one or more of the foregoing, provided, however, that notwithstanding the use of the terms "over" and "under," in no case will any Easement extend outside the horizontal or vertical boundaries, if any, of the property or portion thereof intended to be burdened with said Easement as described in the Plat of Subdivision or this Agreement. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Agreement and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Agreement. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require. Captions and the index are used in this Agreement for convenience only and shall not be used to construe the meaning of any part of this Agreement.

(b) References in this Agreement to property "of" or "owned" by the Retail Owner, shall include the property leased by the Retail Owner pursuant to the Stern Ground Lease and the Chicago Avenue Ground Lease. References in this Agreement to property

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"of" or "owned" by the Hotel Owner shall include property leased by the Hotel Owner pursuant to the Sublease.

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ARTICLE 2.

EASEMENTS APPURTENANT TO HOTEL PARCEL

2.1 **In General.** For the purposes of this Article 2, the following shall apply:

(a) The Retail Owner is the grantor of Easements described in this Article 2. The grants of Easements in this Article 2 and all of the terms and provisions thereof shall bind and be enforceable against the Retail Owner and its successors and assigns, and against the Retail Property. The Chicago Avenue Ground Lessor is joining in this Agreement for the purpose of subjecting the Chicago Avenue Fee Estate to this Agreement, as more particularly set forth in the Joinder attached to this Agreement and made a part hereof.

(b) The Hotel Owner is the grantee of the Easements described in this Article 2. Such Easements shall benefit the Hotel Owner, and its successors, assigns and Permittees, and the Hotel Property.

(c) The grant of an Easement by the Retail Owner to the Hotel Owner shall bind and burden the Retail Property (including without limitation the Chicago Avenue Fee Estate and the Stern Fee Estate), which shall, for the purpose of this Article 2, be deemed to be the servient tenement.

(d) The grant of an Easement by the Retail Owner to the Hotel Owner is appurtenant to, runs with and shall benefit the Hotel Property, which shall with respect to any such Easement, for the purpose of this Article 2, be deemed to be the dominant tenement. No property other than the Hotel Property as it may exist from time to time shall constitute part of the dominant tenement, with respect to any Easements granted pursuant to this Article 2.

(e) Unless otherwise provided in this Agreement, all Easements granted to the Hotel Owner under this Agreement and the Plat of Subdivision are irrevocable and perpetual.

(f) In exercising its rights in connection with any non-exclusive Easement granted under this Article 2, the Hotel Owner shall minimize any impact of its exercise on the Retail Owner, taking into consideration the economic impact of any disruption on the Retail Owner and its tenants and shall comply with the provisions of Sections 14.1(e) and 14.1(g) to the extent such Sections are applicable in accordance with their terms;

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provided, however, that in connection with the work contemplated to be performed under the Construction Coordination Agreement, the terms of the Construction Coordination Agreement shall govern in the event of any conflict with this Agreement. In addition, in exercising its rights within or with respect to the Hotel Exclusive Easement Premises, the Hotel Owner shall not materially adversely affect the use or operation of the Retail Building or any Retail Owned Facilities.

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(g) The Retail Owner may, (1) in connection with the Maintenance, repair or restoration of the Retail Building, or (2) in an Emergency Situation: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements (other than the Hotel Exclusive Easement Premises), but only to the minimal extent and for the shortest time period necessary under the circumstances in order to minimize the effect on the user of such Easement. The Retail Owner may, from time to time, impose (1) limitations on, and rules and regulations with respect to, the Hotel Owner's or any Permittee's use of any Easement (other than the Hotel Exclusive Easement Premises), including, without limitation, establishing paths of ingress and egress, and (2) security controls consistent with the operation by Retail Owner of the Retail Property in accordance with the terms of this Agreement. The Retail Owner shall consult with the Hotel Owner prior to imposing any such limitations or controls, and in imposing limitations or controls, the Retail Owner shall take into consideration the reasonable needs and requirements of the user of the Easement (other than the Hotel Exclusive Easement Premises) as well as the Retail Owner's own needs and requirements, and shall use reasonable efforts to minimize any adverse impact on operations of the Hotel Building. Except to the extent unavoidable during the existence of an Emergency Situation, Retail Owner shall not cause an interruption in any building services necessary for the operation of the Hotel Property in accordance with the terms of this Agreement, without the prior consent of the Hotel Owner.

(h) Any disputes concerning the existence, location, nature and scope of any of the Easements granted or reserved under this Article 2, to the extent that the location thereof is not specifically delineated in this Agreement, shall constitute an Arbitrable Dispute.

(i) Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate only to the extent reasonably necessary for Maintenance and support of the property of the Owner of the servient estate, which shall in all respects be conducted in a manner which minimizes any adverse impact on the Owner of the dominant estate and shall be coordinated through the Hotel Owner pursuant to Section 20.12(b), and for other uses which are specifically provided for in this Agreement.

(j) Any access or use by the Hotel Owner of any portion of the Retail Building which is leased to tenants of the Retail Building, with respect to any Easement granted or

reserved under this Article 2, shall be in all respects subject to the terms of the applicable lease, shall be conducted in a manner which minimizes any adverse impact on tenants of the Retail Building and shall be coordinated through the Retail Owner pursuant to Section 20.12(a).

2.2 Hotel Exclusive Easement Premises. Retail Owner hereby grants to Hotel Owner an exclusive easement for the use, equipping, Maintenance, decoration, redecoration, restoration and reconstruction (solely with respect to reconstruction undertaken in accordance with this Agreement) of the following areas located within the Retail Property:

(a) three (3) service elevator shafts (including the associated elevator pits) ("**Service Elevator Shafts**"), identified as Lots 4 and 4G on the Plat of Subdivision (subject to the right of the Retail Owner to utilize the elevators and related Facilities located in such elevator shafts in accordance with Section 3.13 hereof);

(b) two (2) shafts for hotel risers (together the "**Hotel Riser Shaft**"), identified as Lots 4J and 4B on the Plat of Subdivision; provided that, notwithstanding the exclusive nature of the foregoing Easement to the extent space is reasonably available after due consideration is given for space requirements set forth in the Hotel Building Plans, the Retail Owner shall be allowed to install and Maintain in the Hotel Riser Shaft conduits and connections to Retail Owned Facilities located in the Building in accordance with Section 3.7 hereof, in such locations and subject to such requirements as may be reasonably established by the Hotel Owner and which do not materially adversely affect the use thereof by the Retail Owner.

(c) Facade Easements Numbers 1, 2, 3, 4, 5 and 6 identified on the Plat of Subdivision, in all events subject to the limitations on the ability of Hotel Owner to make Alterations to the facade of the Retail Building included in such Easements set forth in Sections 6.8 and 14.1;

(d) the exclusive Easements granted pursuant to Section 2.6 and

(e) the Passenger Elevator Shafts.

The items referred to in clauses (a) through (e) above in this Section 2.2 are referred to herein collectively as the "**Hotel Exclusive Easement Premises.**" During the existence of an Emergency Situation requiring access to the Hotel Riser Shaft, upon request of the Hotel Owner in accordance with Section 20.12(a), the Retail Owner will allow the Hotel Owner access to the Hotel Riser Shaft for the purpose of performing necessary repairs, subject to the terms of any applicable leases of space in the Retail Building. The use of such right of access by the Hotel Owner shall not materially adversely affect or interfere with the business or operations of any tenants of the Retail Building and the Hotel Owner shall take all steps reasonably necessary to minimize any such material adverse affect or interference. All of the Hotel Exclusive Easement

Premises are for the exclusive benefit of the Hotel Owner, except as otherwise expressly provided in this Agreement. The uses of the Hotel Exclusive Easement Premises and the Hotel Exclusive Easement Improvements may include (i) the purposes for which the Hotel Exclusive Easement Premises are presently intended; and (ii) such substitute uses and incidental uses as are consistent with the operation of the Hotel Building and the Hotel Exclusive Easement Improvements as a hotel, retail, restaurant, health club, residential, office or mixed-use project (or any combination thereof) in accordance with the terms of this Agreement (with customary ancillary facilities); all in accordance with such rules, regulations, security restrictions, policies (including policies relating to the terms, if any, on which the foregoing premises shall be open to non-guests of the Hotel) and operating procedures as may be implemented by Hotel Owner from time to time in its sole discretion.

2.3 Ingress and Egress. The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement for ingress and egress only for Persons, materials and equipment in, over, on, across and through the following areas (all as identified on the Plat of Subdivision), as limited as set forth below:

- (a) Stair Easement No. 1
- (b) Stair Easement No. 2;
- (c) Stair Easement No. 3
- (d) Stair Easement No. 4;
- (e) Corridor Easement No. 1;
- (f) Corridor Easement No. 2;
- (g) Corridor Easement No. 3; and
- (h) Corridor Easement No. 4.

The ingress and egress easements provided for in this Section 2.3 shall be for the following limited purposes: (i) the ingress and egress easements for Stair Easements No. 1, No. 3 and No. 4 and Corridor Easement No. 3 may be used for emergency ingress and egress and other uses which are not regular and continuous; and (ii) the Corridor Easements shall be for the limited purpose of providing access as and when needed to the Hotel Exclusive Easement Premises or the other areas located within the Retail Building over which the Hotel Owner has expressly been granted an easement. In addition, Retail Owner reserves the right to change, at its sole cost and expense, the location of the Corridors (and correspondingly the Corridor Easements) from time to time as determined by Retail Owner in its sole and absolute discretion; provided, however, that in all events Hotel Owner shall have reasonable, safe and uninterrupted access to the Hotel Property and Hotel Exclusive Easement Premises, the Hotel Exclusive Easement Improvements and the other areas located within the Retail Building over which the Hotel Owner has expressly been granted an easement.

2.4 Structural Support. The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement in all Structural Support located in or constituting a part of the Retail Property for the support of (A) the Hotel Building (and the customary and ordinary contents

thereof), (B) Hotel Owned Facilities, and (C) the Hotel Exclusive Easement Premises, the Hotel Exclusive Easement Improvements and any other areas located within the Retail Building in which the Hotel Owner has expressly been granted an easement pursuant to this Agreement, together with a non-exclusive easement for the Maintenance of said Structural Support; provided, however, that nothing contained in this Agreement shall entitle the Hotel Owner to a greater capacity of Structural Support or Structural Integrity than is contemplated under the Retail Building Plans.

2.5 Use of Facilities. The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement over the lower level and fourth floor, as applicable, of the Retail Property (excluding any portions of the Retail Property leased to tenants; provided, however, that in leasing such areas of the Retail Building, Retail Owner shall not grant to such tenants any rights which could or would unreasonably interfere with the use by the Hotel Owner of the Easements granted pursuant to this Section 2.5) (A) as necessary to connect the Hotel Owned Facilities located in (a) Fire/House Pump Easement No. 1; (b) Telephone Easement No. 1; (c) Gas Meter Easement No. 1; (d) Electric Vault Easement No. 1; (e) Elevator Vestibule Easement No. 1; (f) Lot 4G; (g) Switchgear Easement No. 1; (h) Mechanical Easements 1, 2 and 3; (i) Elevator Machinery Room Easement No. 1; and (j) Lot 4, all as identified on the Plat of Subdivision, to the Hotel Riser Shaft and (B) permitting the exercise of the rights granted to the Hotel Owner pursuant to Section 5.4(a) hereof during any period in which said rights may be exercised hereunder; provided, however that in exercising its rights pursuant to this Section, the Hotel Owner shall not materially adversely affect the use or operation of the Retail Building or any Retail Owned Facilities. Furthermore, Retail Owner hereby grants to Hotel Owner a non-exclusive easement over the Retail Property for the use, operation and Maintenance of the waste line (the "Waste Line") identified on the Retail Building Plans which connects the grease trap ("Grease Trap") identified on the Retail Building Plans to the kitchen facilities located within the Hotel Building.

2.6 Signs, Flags and Canopies. The Retail Owner hereby grants to the Hotel Owner an exclusive easement for the construction (which easement for construction shall be temporary and shall terminate when the initial construction of the Hotel Building and the Hotel Exclusive Easement Improvements has been completed in accordance with the Hotel Building Plans), use, Maintenance, repair and replacement of (i) a canopy on the exterior facade of the Hotel Building Lobby adjacent to East Superior Street in the location shown on, and with the design and dimensions as generally shown on, the Hotel Plans; (ii) a sign on or above the canopy identifying the Hotel located in Facade Easements 1, 2 and 3 in the location and with the design and dimensions shown on, the Hotel Building Plans and on the terms and conditions hereinafter set forth; and (iii) flagpoles above the entrance to the Hotel. The Hotel Building Plans provide access to the second floor windows located in Facade Easement No. 3 designated on the Plat of Subdivision from the exterior of the Building. In the event such exterior access is unavailable, the Retail Owner also hereby grants to Hotel Owner a non-exclusive easement for the use of 2nd floor corridors in the Retail Building necessary to access the canopy, flagpoles and signs described above from the Building interior, following notice to the Retail Owner and subject to the rights of any tenants of the Retail Building. The use of such right of easement by the Hotel Owner shall not materially adversely affect or interfere with the business or operations of any

tenants of the Retail Building and the Hotel Owner shall take all necessary steps to minimize any such material adverse affect or interference. The Hotel Owner shall be responsible for compliance of the canopy, flagpoles and signs with all Laws. The Hotel Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use the canopy, flagpoles and signs at the designated locations on the Retail Building.

2.7 **Common Walls, Ceilings and Floors.** The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the common boundaries of the Retail Parcel and the Hotel Parcel, or along the boundaries of the Hotel Exclusive Easement Premises which also serve as walls, ceilings or floors for the Hotel Building, or the Hotel Exclusive Easement Premises, as the case may be. The use of such right of easement by the Hotel Owner shall not materially adversely affect or interfere with the business or operations of any tenants of the Retail Property and the Hotel Owner shall take, at its sole cost and expense, all necessary steps to minimize any such material adverse affect or interference.

2.8 **Utilities.** The Retail Owner hereby grants to the Hotel Owner (and if requested by the applicable Utility Company, the Retail Owner shall grant to such Utility Company) non-exclusive easements for utility purposes, including the right to install, lay, maintain, repair, remove and replace electrical or optical conduits, wires and equipment, water mains and pipes, conduits for chilled water or other refrigerants, sewer lines, gas mains, wires and equipment and cables for transmission of telephone, television or other electrically or optically transmitted information, and the technological evolution of the foregoing, in the Retail Property within the Hotel Riser Shaft. If, at any time, it shall become necessary to relocate or add to utility easements other than as shown in the Plans in order to provide utility service to the Hotel Property, the Retail Owner agrees upon request from the Hotel Owner, to grant such additional or relocated utility easements (at such location mutually agreed to by the Hotel Owner and the Retail Owner), provided (A) such easements do not unreasonably and materially interfere with the use and enjoyment of the Retail Property for the purposes for which the Retail Building is then being used, (B) such easements (including the installation of Facilities and the repair and Maintenance thereof) do not interfere with the use and operation of the Retail Property by the tenants of the Retail Property, (C) the Retail Owner shall not be required to grant such easement which would convert otherwise available leased space to such use, and (D) the Hotel Owner shall compensate the Retail Owner for any damages, reasonable costs or reasonable expenses incurred by the Retail Owner. The Hotel Owner and the Retail Owner shall cooperate in good faith to establish a budget and construction program to accomplish the foregoing prior to undertaking such additions or relocations. Any such new or relocated utilities shall be designated on the Plans, and, if necessary the Plans shall be revised, acknowledged by the Owners, and incorporated as an amendment to this Agreement.

2.9 **Deliveries.** The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement for the use of the loading docks located in the Loading Dock Easement No. 1 (as shown on the Plat of Subdivision) as necessary or desirable for the delivery or dispatch of materials,

supplies, goods, refuse and the like to and from the Hotel Property, and for any other similar purposes for which such areas are customarily used in connection with the operation of the Hotel Property for the uses contemplated or permitted under this Agreement, subject to the limitations on use set forth in this Agreement, including the right to construct a station for a receiving manager for the Hotel Property in the location designated in the Hotel Building Plans. The Hotel Owner acknowledges and agrees that the use of such loading docks by the Hotel Owner and its Permittees shall be subject to the rules and regulations set forth on Exhibit 2.9 (the "Loading Dock Rules"). Hotel Owner shall at all times have priority access to the second most northerly loading dock located in Loading Dock Easement No. 1, as set forth in the Loading Dock Rules. The Loading Dock Rules may be modified from time to time by the Retail Owner, with a copy of any such modified Loading Dock Rules to be promptly provided to the Hotel Owner; provided that any such modifications of the Loading Dock Rules shall not unreasonably adversely affect the use of the loading docks located in the Loading Dock Easement No. 1 by the Hotel Owner for the operation of the Hotel pursuant to the terms of this Agreement. Any dispute as to the modification or application of the Loading Dock Rules shall be an Arbitrable Dispute.

2.10 **Mechanical Easements**. The Retail Owner hereby grants to the Hotel Owner a non-exclusive easement for the use of the following equipment rooms and mechanical areas containing Facilities serving the Hotel Building or the Hotel Exclusive Easement Premises: (a) Fire/House Pump Easement No. 1; (b) Telephone Easement No. 1; (c) Gas Meter Easement No. 1; (d) Electric Vault Easement No. 1; (e) Mechanical Easements Nos. 1, 2 and 3, subject in all respects to the rules and regulations set forth in Exhibit 2.10 (the "Mechanical Room Rules"); (f) Elevator Vestibule Easement No. 1; (g) Elevator Machinery Room Easement No. 1; and (h) Switchgear Easement No. 1.

2.11 **Encroachments**. The Retail Owner hereby grants to the Hotel Owner an easement permitting the existence of encroachments if, by reason of the construction of the Building, or the Hotel Exclusive Easement Improvements, or the subsequent settlement or shifting of the Building, or the Hotel Exclusive Easement Improvements, any part of the Hotel Building or Hotel Owned Facilities not originally designed to be located within the Retail Property encroaches or shall hereafter encroach upon any part of the Retail Property, or if the Hotel Exclusive Easement Premises or Hotel Exclusive Easement Improvements shall encroach on portions of the Retail Property other than as contemplated by the Retail Building Plans. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroachment continues to exist.

2.12 **Construction**. The Retail Owner hereby grants to the Hotel Owner non-exclusive easements in the Retail Property for the purpose of carrying out the construction activities (including the installation, relocation and modification of the Hotel Exclusive Easement Facilities) contemplated to be performed by the Hotel Owner pursuant to and in accordance with the terms of the Construction Coordination Agreement, including but not limited to easements for access, temporary utility connections and the operation of construction equipment, as contemplated under and in accordance with the terms of the Construction Coordination Agreement.

2.13 **Elevator Machinery Room**. The Retail Owner hereby grants to the Hotel Owner a temporary, non-exclusive easement for the use, operation, Maintenance and repair of the elevator machinery room identified as Elevator Machinery Room Easement No. 1 on the Plat of Subdivision (the "**Elevator Machinery Room**") and the Facilities located therein. Pursuant to the Hotel Building Plans, Hotel Owner intends to convert the elevator ("**Elevator #1**") identified as Lot 4G on the Plat of Subdivision from a hydraulic elevator to a traction elevator and, following such conversion, Hotel Owner will no longer need any easement or use rights with respect to the Elevator Machinery Room and the rights of easement granted in this Section 2.13 shall terminate as of the completion date of such conversion. Promptly following the conversion of Elevator #1 to a traction elevator, Hotel Owner, at Hotel Owner's sole cost and expense, will in a good, workmanlike and lien free manner, remove all of the equipment contained in the Elevator Machinery Room and dismantle the demising walls of the Elevator Machinery Room. The work to be performed by Hotel Owner pursuant to this Section 2.13 shall be in compliance with Section 14.1(g) hereof whether or not such work is "Alterations" as well as in compliance with the standards contained in the Construction Coordination Agreement.

ARTICLE 3.

EASEMENTS APPURTENANT TO RETAIL PARCEL

3.1 **In General**. For the purposes of this Article 3, the following shall apply:

(a) The Hotel Owner is the grantor of the Easements described in this Article 3. The grants of Easements in this Article 3 and all of the terms and provisions thereof shall bind and be enforceable against the Hotel Owner and its successors and assigns, and against the Hotel Property.

(b) Retail Owner is the grantee of the Easements described in this Article 3. Such Easements shall benefit the Retail Owner, and its successors, assigns and Permittees, and the Retail Property.

(c) The grant of an Easement by the Hotel Owner to the Retail Owner shall bind and burden the Hotel Property, which shall, for the purpose of this Article 3, be deemed to be the servient tenement.

(d) The grant of an Easement by the Hotel Owner to the Retail Owner is appurtenant to, runs with and shall benefit the Retail Property, which shall, for the purpose of this Article 3 with respect to such Easement, be deemed to be the dominant tenement. No property other than the Retail Property as it may exist from time to time shall constitute part of the dominant tenement, with respect to any easements granted pursuant to this Article 3.

(e) Unless otherwise provided in this Agreement, all Easements granted to the Retail Owner under this Agreement and the Plat of Subdivision are irrevocable and perpetual.

(f) In exercising its rights in connection with any non-exclusive Easement granted under this Article 3, the Retail Owner shall minimize any impact of its exercise on the Hotel Owner, taking into consideration the economic impact of any disruption on the Hotel Owner and the Hotel guests, and shall comply with the provisions of Sections 14.1(e) and 14.1(g) to the extent such Sections are applicable in accordance with their terms; provided, however, that in connection with the work contemplated to be performed under the Construction Coordination Agreement, the terms of the Construction Coordination Agreement shall govern in the event of any conflict with this Agreement. In addition, in exercising its rights within or with respect to the Retail Exclusive Easement Premises, the Retail Owner shall not materially adversely affect the use or operation of the Hotel Building or any Hotel Owned Facilities.

(g) The Hotel Owner may (1) in connection with the Maintenance, repair or restoration of the Hotel Building, or (2) in an Emergency Situation: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements (other than the Retail Exclusive Easement Premises), but only to the minimal extent and for the shortest time period necessary under the circumstances in order to minimize the effect on the user of such Easement. The Hotel Owner may, from time to time, impose (1) limitations on, and rules and regulations with respect to, Retail Owner's or any Permittee's use of any Easement (other than the Retail Exclusive Easement Premises), including, without limitation, establishing paths of ingress and egress, and (2) security controls consistent with the Hotel Owner's operation of the Hotel Property in accordance with the terms of this Agreement. The Hotel Owner shall consult with the Retail Owner prior to imposing any such limitations or controls, and in imposing limitations or controls, the Hotel Owner shall take into consideration the reasonable needs and requirements of the user of the Easement (other than the Retail Exclusive Easements) as well as the Hotel Owner's own needs and requirements, and shall use reasonable efforts to minimize any adverse impact on operations of the Retail Building. Except to the extent unavoidable during the existence of an Emergency Situation, Hotel Owner shall not cause an interruption in any building services necessary for the operation of the Retail Property in accordance with the terms of this Agreement, without the prior consent of the Retail Owner.

(h) Any disputes concerning the existence, location, nature and scope of any of the Easements granted or reserved under this Article 3, to the extent that the location thereof is not specifically delineated in this Agreement, shall constitute Arbitrable Disputes.

(i) Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate only to the extent reasonably necessary for Maintenance and support of the property of the Owner of the servient estate, which shall in all respects be coordinated in a manner which minimizes any adverse impact on the Owner of the dominant estate and shall be coordinated through Retail Owner pursuant to Section 20.12(a), and for other uses which are specifically provided for in this Agreement.

(j) Any access or use by the Retail Owner of any portion of the Hotel Building which is leased to tenants of the Hotel Building or occupied by guests of the Hotel Building, with respect to any Easement granted or reserved under this Article 3, shall be in all respects subject to the terms of the applicable lease in the case of areas leased to tenants, shall be conducted in a manner which minimizes any adverse impact on tenants or guests of the Hotel Building and shall be coordinated through the Hotel Owner pursuant to Section 20.12(b).

3.2 **Ingress and Egress**. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the following areas (all as identified on the Hotel Building Plans), as limited as set forth below:

- (a) Staircase 4A on all levels of the Hotel Building;
- (b) Staircase 4B on all levels of the Hotel Building;
- (c) Staircase 6A on all levels of the Hotel Building;
- (d) Staircase 6B on all levels of the Hotel Building;
- (e) Service Elevator Lobby and Corridor 1907 and Corridors 1905 and 1906 located on the 19th level of the Hotel Building as designated in the Hotel Building Plans;
- (f) Service Elevator Lobby and Corridor 2004 and Rooms 2002, 2006 and 2022 located on the 20th level of the Hotel Building and Stair 6 between the 20th and 19th level mechanical areas as designated in the Hotel Building Plans; and
- (g) Such areas of the 4th level service corridor, the 5th level area above the 4th level service corridor and the 6th level roof identified on the Hotel Building Plans as are necessary for ingress, egress and access to the Retail Exhaust Shaft.

The ingress and egress easements provided for in this Section 3.2 shall be for the following limited purposes: (i) the easements for Staircases 4A, 4B, 6A and 6B may be used for emergency ingress and egress for Persons only; (ii) the service elevator lobby and corridor easements granted pursuant to Section 3.2(f) shall be for the limited purpose of providing access as and when needed to the Retail Exclusive Easement Premises or the other areas located within the Hotel Building over which the Retail Owner has expressly reserved or been granted an easement, (iii) the

easement granted pursuant to subsection 3.2(g) above is granted to provide ingress, egress and access to the Retail Exhaust Shaft, and (iv) the easement granted pursuant to subsection 3.2(e) above shall be used only to the extent necessary to transport machinery, equipment and tools to the Retail Exclusive Easement Premises located on the 19th level of the Hotel Building. In addition, Hotel Owner reserves the right to change, at its sole cost and expense, the location of the Corridors (and correspondingly the easements over such Corridors) from time to time as determined by Hotel Owner in its sole and absolute discretion; provided, however, that in all events Retail Owner shall have reasonable, safe and uninterrupted access to the Retail Property, Retail Exclusive Easement Premises, the Retail Exclusive Easement Improvements, and the other areas located within the Hotel Building over which the Retail Owner has expressly reserved or been granted an easement.

3.3 Structural Support. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement in all Structural Support located in or constituting a part of the Hotel Property for the support of (A) the Retail Building (and the customary and ordinary contents thereof), (B) any Facilities or areas located in the Hotel Property with respect to which the Retail Owner is granted an Easement, (C) Retail Owned Facilities, and (D) the Retail Exclusive Easement Premises and the Retail Exclusive Easement Improvements and any other areas located within the Hotel Building in which the Retail Owner has expressly been granted an easement pursuant to this Agreement, together with a non-exclusive easement for the Maintenance of said Structural Support; provided, however, that nothing contained in the Agreement shall entitle the Retail Owner to a greater capacity of Structural Support or Structural Integrity than is contemplated under the Hotel Building Plans.

3.4 Use of Facilities. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement over the areas of the Hotel Building (A) identified as the 4th, 5th and 6th levels on the Hotel Building Plans, subject to the limits on access, ingress and egress set forth in Section 3.2, for the construction, installation, use and Maintenance of the exhaust shaft serving the Retail Building extending from the Retail Building to the ballroom roof of the Hotel Building in the area of the intersection of column lines 8 and A.4 on the Hotel Building Plans (the "Retail Exhaust Shaft) (B) as necessary to connect the Retail Owned Facilities located in (i) Mechanical Room 1938 located on the 19th level of the Hotel Building as identified in the Hotel Building Plans; (ii) Mechanical Rooms 2007 and 2022 located on the 20th level of the Hotel Building as identified in the Hotel Building Plans; and (iii) the areas of the Hotel Building identified on the Hotel Building Plans as the Roof Plan and the Penthouse Roof Plan, to the Retail Building and (C) permitting the exercise of the rights granted to the Retail Owner pursuant to Section 5.4(b) hereof during any period in which said rights may be exercised hereunder; provided, however that in exercising its rights pursuant to this Section, the Retail Owner shall not materially adversely affect the use or operation of the Hotel Building or any Hotel Owned Facilities.

3.5 Encroachments. The Hotel Owner hereby grants to the Retail Owner an easement permitting the existence of encroachments if, by reason of the construction of the Building or the Retail Exclusive Easement Improvements or the subsequent settlement or shifting of the Building,

or the Retail Exclusive Easement Improvements, any part of the Retail Building or Retail Owned Facilities not originally designed to be located within the Hotel Property encroaches or shall hereafter encroach upon any of the Hotel Property, or if the Retail Exclusive Easement Premises or Retail Exclusive Easement Improvements shall encroach on portions of the Hotel Property other than as contemplated by the Hotel Building Plans. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroachment continues to exist.

3.6 Common Walls, Ceilings and Floors. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the common boundaries of the Retail Parcel and the Hotel Parcel which also serve as walls, ceilings or floors for the Retail Building or Retail Exclusive Easement Premises. The use of such easement by the Retail Owner shall not materially adversely affect or interfere with the business or operations of any tenants of the Hotel Property or the use of the Hotel Property by Hotel guests and the Retail Owner shall take, at its sole cost and expense, all steps reasonably necessary to minimize any such adverse affect or interference.

3.7 Future Facilities. The Retail Owner hereby reserves a non-exclusive easement and right of use over and through the Hotel Riser Shafts for the installation, use and Maintenance of risers, conduits and wiring connecting Facilities or areas in the Retail Building to: (i) any Facilities, including antennae or other communications devices or equipment owned by Retail Owner or its tenants and located on the roof of the Hotel Building pursuant to Section 3.9, or (ii) to circulate chilled water between the Retail Chilled Water Facilities and the Retail Building, all of which Facilities shall extend solely through space designated on the Retail Building Plans and Hotel Building Plans for such use. The use by the Retail Owner of the aforementioned non-exclusive right of use shall be in such locations and subject to such requirements as may be reasonably established by the Hotel Owner and which do not materially adversely affect the use thereof by the Retail Owner. During the existence of an Emergency Situation requiring access to the Hotel Riser Shaft, upon request of the Retail Owner, in accordance with Section 20.12(b), the Hotel Owner will allow the Retail Owner access to the Hotel Riser Shaft for the purpose of performing necessary repairs, to the extent permitted under any applicable lease of space in the Hotel Building. The use of such right of access by the Retail Owner shall not materially adversely affect or interfere with the business or operations of any tenants of the Hotel Building or the use of the Hotel Building by Hotel guests and the Retail Owner shall take all steps reasonably necessary to minimize any such material adverse affect or interference.

3.8 Exterior Maintenance. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement for the use of the tie inserts, tie-in sleeves and detent pins on the exterior facade of the Hotel Building and davits and davit sockets on the roofs of the Hotel Building which are constructed as part of the Hotel Building in accordance with the Hotel Building Plans and otherwise to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Retail Building. The non-exclusive easement for window washing

and exterior Maintenance granted pursuant to this Section 3.8 shall not include the use by the Retail Owner of the piazza located on the 4th floor roof for such purposes.

3.9 **Hotel Building Roof.** The Hotel Owner hereby grants a non-exclusive easement for use of the portion of the roofs above the Hotel Building identified as the Roof Plan and the Penthouse Roof Plan in the Hotel Building Plans to the Retail Owner for (i) antennae, a satellite dish and other telecommunication devices used from time to time solely by the Retail Owner or its Permittees for the Retail Building, and (ii) mechanical equipment and other equipment of any kind serving only the Retail Building. In any case, Hotel Owner shall have the right to approve the location, size, aesthetics and installation process of Retail Owner's devices and equipment, if any, located on said roof of the Hotel Building. The Hotel Owner will not unreasonably withhold its consent to the designation of areas for the use by the Retail Owner for the purpose set forth in this Section 3.9. In particular, (i) the satellite dishes, antennae and other telecommunications devices and the area for use thereof by the Retail Owner shall be in the dimensions and area satisfactory to the Hotel Owner; (ii) the Retail Owner's use of the satellite dishes, antennae and other telecommunications devices shall not unreasonably interfere with other receptions from or transmissions to the Hotel Owner's facilities on the roof of the Hotel Building or any signs located on the roof of the building in accordance with the terms of this Agreement; and (iii) the Retail Owner shall remove the satellite dish and all related equipment when its use ends and repair any damage to the Building caused by such items. Installations pursuant to Sections 3.7, 3.9 and 3.10 hereof shall constitute an Alteration under Article 14 and the plans and specifications therefor shall require consent of the Hotel Owner. The Retail Owner shall not make any penetrations of or attachments to the roof of the Hotel Building without the prior consent of the Hotel Owner and any such penetrations or attachments shall be made, repaired, Maintained and replaced by a contractor designated by Hotel Owner.

3.10 **Retail Exclusive Easement Premises.** The Hotel Owner hereby grants to the Retail Owner an exclusive easement in the portions of the Hotel Building described in Exhibit 3.10.1 and located in the levels of the Hotel Building designated in the Hotel Building Plans as levels 19 and 20 (the "**Retail Exclusive Easement Premises**") for the use, for their intended purpose, and the Maintenance of the mechanical equipment (including a cooling tower for the Retail Building described in Exhibit 3.10.2 attached hereto (the "**Retail Exclusive Easement Facilities**"). All of the Retail Owner's Facilities in the Retail Exclusive Easement Premises shall be separately metered. All of the Retail Exclusive Easement Premises are for the exclusive benefit of the Retail Owner, except as otherwise expressly provided in this Agreement. The uses of the Retail Exclusive Easement Premises and Retail Exclusive Easement Improvements may include (i) the purposes for which the Retail Exclusive Easement Premises are presently intended; and (ii) such substitute uses and incidental uses related to cooling and climate control of the Retail Building as are consistent with the operation of the Retail Building and the Retail Exclusive Easement Improvements as a retail operation (with customary ancillary facilities); all in accordance with such reasonable rules, regulations, security restrictions, policies and operating procedures as may be implemented by Hotel Owner from time to time.

3.11 **Mechanical Easements**. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement for the use of Mechanical Easements Nos. 4, 5 and 6 and Mechanical Rooms 1938, 2007 and 2022 designated on the Hotel Building Plans, subject in all respects to the rules and regulations set forth in **Exhibit 2.10** (the "Mechanical Room Rules").

3.12 **Construction**. The Hotel Owner hereby grants the Retail Owner a non-exclusive easement in the Hotel Property for the purpose of carrying out the installation, relocation and modification of the Retail Exclusive Easement Facilities, as contemplated to be performed by the Retail Owner pursuant to and in accordance with the terms of the Construction Coordination Agreement, including but not limited to easements for access, temporary utility connections and the operation of construction equipment, as contemplated under and in accordance with the terms of the Construction Coordination Agreement.

3.13 **Elevator**. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement to use the elevator designated as being within "Service Elevator Easement No. 1" located in Lot 4G on the Plat of Subdivision (the "Shared Elevator") as and when needed by Retail Owner (or the tenants of the Retail Building) in connection with the ownership, operation, use, repair and Maintenance of the Retail Building and Retail Exclusive Easement Facilities. Furthermore, at any time when the Shared Elevator is not operative, Retail Owner shall be permitted to use the elevator designated as being within Service Elevator Easement No.2 on the Plat of Subdivision on the same basis that Retail Owner (and its tenants) are permitted to use the Shared Elevator. The Retail Owner acknowledges and agrees that the use of the Shared Elevator (and substitute therefor) by the Retail Owner and its Permittees shall be subject to the rules and regulations set forth on **Exhibit 3.13** (the "Service Elevator Rules"). The Service Elevator Rules may be modified only with the consent of the Owners, which shall not be unreasonably withheld. Any dispute as to the modification or application of the Service Elevator Rules shall be an Arbitrable Dispute.

3.14 **Detector and Alarm**. The Hotel Owner hereby grants to the Retail Owner a non-exclusive easement to connect the Retail Building's fire control systems and related Facilities to Fire Alarm and Control Panel Easement No. 1 identified on the Plat of Subdivision, together with access to such panel as and when needed by Retail Owner (including to test the fire control system from time to time). The fire control panel to be constructed by Hotel Owner shall be constructed in compliance with all applicable laws, rules, regulations, permits and codes, and shall be a shared facility serving the Retail Building and the Hotel Building. Retail Owner is hereby granted an easement for access to and use and Maintenance of the portions of the fire control panel serving the Retail Building.

3.15 **Polo Airspace Easements**. The Hotel Owner hereby grants to Retail Owner an easement to construct, place, operate and Maintain Retail Owned Facilities serving the Retail Property in the areas of the base elevation of the Polo Airspace (the "Polo Easement Area"); provided, however, that (i) such Retail Owned Facilities shall not be used or operated in a manner which constitutes a nuisance or causes or results in loud noises, vibrations or noxious odors which

affect the use, enjoyment or operation of Hotel Building, (ii) the Retail Owner shall screen all Retail Owned Facilities located in the Polo Easement Area from view of the Hotel Building, in a manner aesthetically consistent with the screening of any Facilities on the Polo Easement Area by Hotel Owner at the time of the initial construction of the Hotel and satisfactory to the Hotel Owner in its reasonable judgment, and (iii) if (x) Hotel Owner requests that any Retail Owned Facilities located or to be located in the Polo Easement Area be moved to or located on the Hotel Building rooftop mechanical areas, (y) such Retail Owned Facilities can be located on the Hotel Building rooftop mechanical areas without materially affecting their function or operation, and (z) the Hotel Owner makes necessary accommodations for the location of such Retail Easement Facilities on the Hotel Building rooftop mechanical areas, including providing necessary easements and paying all reasonable costs and expenses relating to the removal and reinstallation of such Retail Owned Facilities, then the subject Retail Owned Facilities shall be relocated to the Hotel Building rooftop mechanical areas.

ARTICLE 4.

STRUCTURAL SUPPORT

4.1 Structural Safety and Integrity. No Owner shall do or permit any act which would adversely affect the structural Support or Structural Integrity of any portion of the Building.

4.2 Reduction of Structural Integrity.

(a) If for any reason the Structural Integrity for any portion of the Building is inadequate or is reduced below the support required to maintain the structural safety or integrity of said portion of the Building, either Owner may request that an Architect (who shall then act in the capacity of "Architect" under this Article 4) and a contractor (in each case reasonably acceptable to both Owners) review the adequacy of the support or extent of any such reduction and the need for or adequacy of any substitute or additional Structural Support. Nothing contained in this Section 4.2 shall grant to the Owners any right to take any actions which are prohibited pursuant to Section 4.1. The Architect and contractor shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional Structural Support. If the Structural Integrity has been reduced or is inadequate, the Owners shall attempt in good faith to determine which Owner is responsible (including such Owner's agents, contractors, engineers, architects and Permittee) for such inadequacy or reduction, and any Owner may submit such question to the Architect for its advice.

(b) Notwithstanding the foregoing, (i) if the Retail Building has been constructed with the amount of Structural Support and Structural Integrity designed to be provided pursuant to the Retail Building Plans, then the sole remedies for the inadequacy of the Structural Support and Structural Integrity of the Hotel Building resulting from the initial design and construction of the Retail Building shall be as set forth in Section 4.3(b)

and; (ii) if the Hotel Building has been constructed with the amount of Structural Support and Structural Integrity designed to be provided pursuant to the Hotel Building Plans, then the sole remedies for the inadequacy of the Structural Support and Structural Integrity of the Hotel Building resulting from the initial design and construction of the Hotel Building shall be as set forth in Section 4.3(b)

4.3 Construction of Additional Support.

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(a) If substitute or additional Structural Support is required in a portion of the Building in which the Structural Integrity is inadequate or has been reduced, then the Owner or Owners responsible for such inadequacy or reduction (except as provided in Section 4.3(b) where the Owners are expressly made jointly responsible), if the responsible Owner or Owners can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction substantially in accordance with plans and specifications prepared by or reasonably approved by the Architect and reasonably approved by the Owners. The responsible Owner or Owners shall be severally liable to pay all reasonable costs and expenses, including the Architect's and any other architectural fees, in connection with construction of the substitute or additional support, including any ongoing Maintenance costs, and if a responsible Owner has paid more than its share, such Owner shall be entitled to contribution or reimbursement from the other responsible Owner in proportion to the other responsible Owner's share of liability. The provisions of Sections 9.3 and 9.4, and not this Article 4, shall apply if the reduction or inadequacy in Structural Integrity results from a fire or other casualty.

(b) If the responsible Owner or Owners cannot be determined for any reason, in accordance with the principles of Section 4.2 or the provisions of Sections 4.2(b) are applicable, then the Owner of the portion of the Building in which said defect is located shall be solely responsible for the cost and expense of correcting the defect or providing substitute or additional Structural Support. For purposes of this Section 4.3, a defect in the original construction of a portion of the Building does not include structural matters which arise out of improper Maintenance by the other Owner or which constitute required or ordinary Maintenance responsibilities. In any case where there is a responsible party other than an Owner, the Owners will jointly pursue appropriate legal and equitable remedies against the responsible party. If joint action is not legally possible, then the Owner or Owners who have a remedy will pursue enforcement for the benefit of all Owners. Where damages are recovered from third parties, the Owners shall apply amounts recovered in the following priority: first, to the costs of suit; second, to payment of costs and expenses of providing substitute or additional support; third, to damages suffered by the Owners as a result of such reduction or inadequacy in Structural Integrity, to each Owner in the ratio of damages suffered by such Owner to total damages suffered by the Owners; and fourth, the balance, if any, to the Owners in proportion to each

Owner's Owner Building Area Ratio. Each Owner, whether pursuing enforcement or not, shall share the costs and expenses (including any fees of the Architect for advice or preparation of plans and specifications) of substitute or additional support and any enforcement action under this Section 4.3(b), in the Owner Building Area Ratio, to the extent such costs and expenses are not recovered from third parties.

(c) The construction of such substitute or additional support shall be performed by a contractor or contractors jointly selected by the Owners (which selection shall be subject to the approval of the Mortgagees). In the event the Owners, and the Mortgagees, fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If, after receiving the Architect's advice, the Owners and their Mortgagees cannot agree on a contractor or contractors to construct such substitute or additional support, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this Article 4, provision or construction of substitute or additional Structural Support shall also include any Maintenance required to remedy or prevent the inadequacy or reduction in structural integrity or safety of the Building.

(d) The work to be performed pursuant to this Article shall be in compliance with Section 14.1(g) hereof whether or not such work is "Alterations" as well as in compliance with the standards contained in the Construction Coordination Agreement if the work is to be performed by or on behalf of Hotel Owner.

4.4 **Effect of Delay.** If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portion of the Building, and it is not likely that such work will be commenced in time to avoid endangering or reducing structural integrity or safety, then the other Owner may, upon not less than ten (10) days advance written notice to the responsible Owner (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional Structural Support as and wherever required; provided, however, the responsible Owner (or Owners otherwise liable for a share of costs and expenses of providing substitute or additional Structural Support) shall be liable for and pay all reasonable costs and expenses incurred as a result of any other Owner's provision of any required substitute or additional support.

ARTICLE 5.

SERVICES TO HOTEL BUILDING OWNER AND TO RETAIL OWNER

5.1 Services to be Provided by the Owners.

(a) The Retail Owner shall furnish or cause to be furnished the following services to the Hotel Owner when, as and if required:

(i) **Subsoil Drainage.** Maintenance of Facilities providing for subsoil drainage in accordance with the Retail Building Plans.

(ii) **Loading Dock.** Maintenance of loading dock Facilities upon the terms and conditions set forth in the Loading Dock Rules.

(iii) **Maintenance of Facilities.** Maintenance of service corridors, exit stairways and all other areas with respect to which the Hotel Owner has a non-exclusive easement.

(iv) **Street Level Exterior Maintenance and Snow Removal.** Street level Maintenance of landscaping and snow removal upon such terms and conditions as may be mutually reasonably agreed upon. In the absence of such an agreement, the Hotel Owner shall be responsible, without reimbursement from the Retail Owner, for Maintenance of street level landscaping, electrical vault Maintenance and Maintenance of canopies and other exterior decorative elements and snow removal in the areas identified in **Exhibit 5.1(a)** hereof and the Retail Owner shall be responsible, without reimbursement from the Hotel Owner, for Maintenance of street level landscaping, electrical vault Maintenance and Maintenance of canopies and other exterior decorative elements and snow removal on the balance of the sidewalk areas adjoining the Retail Building.

(b) The Hotel Owner shall furnish or cause to be furnished the following services to the Retail Owner when, as and if required:

(i) **Maintenance of Service Elevators.** Maintenance of the Shared Elevator, and any elevators for which the Hotel Owner has granted to the Retail Owner easement rights in the event of the unavailability of the Shared Elevator.

(iii) **Maintenance of Facilities.** Maintenance of service corridors, exit stairways, Hotel Riser Shaft and all other areas with respect to which the Hotel Owner has a non-exclusive easement.

5.2 Obligation to Furnish Services. Retail Owner shall use all reasonable efforts to furnish all services as required under Section 5.1(a) in a manner consistent with the efficient and orderly operation of the Building and Hotel Owner shall use all reasonable efforts to furnish all services as required under Section 5.1(b) in a manner consistent with the efficient and orderly operation of the Building. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 5 but shall not be liable under this Article 5 for interruption or inadequacy of service or loss or damage to property or business arising out of such interruption or inadequacy except to the extent resulting from such Owner's gross negligence or willful misconduct and except as may be provided in Section 5.4. Each such Owner obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the

circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation, at all times taking into consideration the reasonable needs and requirements of the other Owner and the Persons located in such other Owner's portion of the Property. Notwithstanding the foregoing, except to the extent necessary during the existence of an Emergency Situation, neither Owner shall take any actions which cause an interruption of any building services necessary for the operation of Hotel or Retail Building, as applicable, in accordance with the terms of this Agreement. Each Owner who is obligated to maintain, repair and replace any Facilities under Sections 9.1 and 9.2 which are connected to other Facilities in the Building, the responsibility for whose Maintenance is another Owner's under this Article 5, shall perform its obligations under Section 9.1 or 9.2 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under Article 5. In no event shall the Retail Owner be obligated under Article 5 for Maintenance of Hotel Owned Facilities, nor shall the Hotel Owner be obligated under Article 5 for Maintenance of Retail Owned Facilities.

5.3 Payment for Services. Payment for services rendered pursuant to this Article 5, Hotel Owner's and Retail Owner's share of insurance maintained pursuant to Article 8 and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of **Exhibit 5.3** attached hereto and made a part hereof. Without limiting the foregoing, (i) Hotel Owner shall pay, in accordance with the terms of **Exhibit 5.3**, the costs of the items included in the "Cost Center Paid by Retail Owner" listed in **Exhibit 5.3** to the extent set forth in the "Allocation to Hotel Owner" listed in **Exhibit 5.3**, and (ii) Retail Owner shall pay, in accordance with the terms of **Exhibit 5.3**, the costs of the items included in the "Cost Center Paid by Hotel Owner" listed in **Exhibit 5.3** to the extent set forth in the "Allocation to Retail Owner" listed in **Exhibit 5.3**.

5.4 Retail or Hotel Owner's Failure to Perform Services.

(a) Retail Owner's Failure to Perform.

(i) If the Retail Owner shall fail to perform any of its obligations as required by the terms and conditions of Section 5.1(a) of this Agreement (except when such failure is caused by the Hotel Owner or by Unavoidable Delay or except when the Retail Owner is entitled to discontinue such service pursuant to Section 5.2 or Section 5.5 hereof) and such failure has a material adverse affect on the use, enjoyment or operation of the Hotel Building and shall continue for a period of ten (10) days after written notice thereof to the Retail Owner from the Hotel Owner, the Hotel Owner shall have the right to perform the same (without limiting any other rights or remedies of the Hotel Owner) until such time as the Retail Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Hotel Building or any of its occupants. In exercising the cure rights provided herein, the Hotel Owner shall not cause damage to or unreasonably interfere in the use, enjoyment or operation of the Retail Building, Retail Exclusive Easement Premises and the Retail Owned Facilities and shall not unreasonably interfere

with the use or enjoyment of any other easement rights of the Retail Owner explicitly granted pursuant to this Agreement or the Plat of Subdivision.

(ii) During any period in which the Hotel Owner is performing pursuant to Section 5.4(a)(i) hereof, the Hotel Owner shall not be obligated to make payments to the Retail Owner as provided in Exhibit 5.3 for such items or services which Hotel Owner is providing pursuant to Section 5.4(a)(i).

(iii) If a dispute exists as to whether the Retail Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate the Hotel Owner's rights under Section 5.4(a)(i) and (ii) and the submission of any such matter to arbitration shall not limit the rights of either Owner to seek injunctive relief in appropriate legal proceedings.

(b) Hotel Owner's Failure to Perform.

(i) If the Hotel Owner shall fail to perform any of its obligations as required by the terms and conditions of Section 5.1(b) of this Agreement (except when such failure is caused by the Retail Owner or by Unavoidable Delay or except when the Hotel Owner is entitled to discontinue such service pursuant to Section 5.2 or Section 5.5 hereof) and such failure has a material adverse effect on the use, enjoyment or operation of the Retail Building and shall continue for a period of ten (10) days after written notice thereof to the Hotel Owner from the Retail Owner, the Retail Owner shall have the right to perform the same (without limiting any other rights or remedies of the Retail Owner) until such time as the Hotel Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Retail Building or any of its occupants. In exercising the cure rights provided herein, the Retail Owner shall not cause damage to or unreasonably interfere in the use, enjoyment or operation of the Hotel Building, Hotel Exclusive Easement Premises and the Hotel Owned Facilities and shall not unreasonably interfere with the use or enjoyment of any other easement rights of the Hotel Owner explicitly granted pursuant to this Agreement or the Plat of Subdivision.

(ii) During any period in which the Retail Owner is performing pursuant to Section 5.4(b)(i) hereof, the Retail Owner shall not be obligated to make payments to the Hotel Owner as provided in Exhibit 5.3 for such items or services which Retail Owner is providing pursuant to Section 5.4(b)(i).

(iii) If a dispute exists as to whether the Hotel Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate the Retail Owner's rights under

Section 5.4(b)(i) and (ii) and the submission of any such matter to arbitration shall not limit the rights of either Owner to seek injunctive relief in appropriate legal proceedings.

5.5 Discontinuance of Services. If, at any time, a Defaulting Owner fails to perform its obligations under Article 4 or Article 5 or to pay a Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Article 4 or Article 5 within ten (10) days after receipt of written notice from the Creditor Owner demanding such performance or payment, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner may discontinue furnishing services to be furnished by the Creditor Owner under Article 5 until said obligations are performed or sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes the Defaulting Owner's obligation to perform such obligations or pay said sum of money and diligently contests any action or proceeding brought to enforce such obligations, collect said sum of money or to enforce any lien therefor, or brings an action or initiates an arbitration proceeding (where permitted or provided for under Article 11) to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner may not discontinue furnishing any such services unless and until it shall finally be determined by arbitration in accordance with Article 11 hereof or a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to perform such obligations or pay said sum of money and thereafter said obligations remain unperformed or such sum of money remains unpaid; and further provided, however, that the Creditor Owner may not discontinue any such services if such discontinuance would cause an Emergency Situation (other than one involving solely economic loss) or under steps to remedy an existing Emergency Situation (other than one involving solely economic loss). Notwithstanding that there may be dispute as to the amount owed, an Owner shall nevertheless continue making payments of any amounts which are not in dispute as required under this Article 5 and **Exhibit 5.3** until the dispute is resolved, at which time the Owners shall refund any overpayment or pay any deficiency, as applicable, including any interest thereon required under **Exhibit 5.3**.

5.6 Replacement of Facilities. An Owner shall, in replacing the Facilities for which such Owner is responsible, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better, and may remove obsolete Facilities without replacement so long as the services formerly provided by said obsolete Facilities are being furnished in substantially the same manner or better by other of said Owner's Facilities. Any Owner may correct the description of the room number or Facilities described in the Appendices to Article 5 Exhibits by notice to the other Owner if such correction is due to error in the description or due to the replacement of such Facilities.

5.7 Data Unavailable from Metering. Where the allocation of the cost of a service under Article 5 is based on usage recorded by meters, and if at any time the actual allocation of cost of service based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative or for any other reason, then for such period when the usage data from meters is unavailable, the Owner performing such service shall make such reasonable determination of costs based on usage, using

such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the other Owners in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a statement of sums owing relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties; provided further, however, if the Owner receiving such notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then either Owner may submit the question to an Architect for its advice. The Architect shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect. Subsequent failure to agree shall constitute an Arbitrable Dispute.

5.8 **Additional Submetering.** Certain ratios for allocating costs of water and electricity are based on areas and have assumed that there will not be unusual or major usage by Owners. If such unusual or major usages do exist, the user shall install submeters to measure its usage and shall pay the cost based on such use; such costs shall be deducted from costs to be allocated under **Exhibit 5.3.** The affected Owners shall agree in writing as to any modifications and, if the affected Owners so elect, such agreement may be recorded with the County Recorder.

5.9 **Conflict with Other Provisions.** To the extent that the provisions of Article 4, 9 and 13 are inconsistent with provisions of Article 5, the provisions of Articles 4, 9 and 13 shall take priority, including those provisions requiring either Owner to contribute to the Maintenance of Facilities or areas or setting forth the allocation or payment of costs or uses of funds.

5.10 **Maintenance and Use of Chilled Water Facilities.**

(a) The Retail Owner shall perform Maintenance of those Facilities described in **Exhibit 3.10.2** hereto ("Retail Chilled Water Facilities") as and when required to circulate chilled water for cooling to systems serving the Retail Building. The Hotel Owner shall perform Maintenance of those Facilities described in **Exhibit 5.10(b)** hereto ("Hotel Chilled Water Facilities") as and when required to circulate chilled water for cooling to systems serving the Hotel Building. The Retail Chilled Water Facilities and the Hotel Chilled Water Facilities shall each be maintained by the respective Owners in good working order and shall each chill and circulate water at 42 degrees Fahrenheit, at the cooling peak load of the Retail Building and the Hotel Building, respectively, at the supply header.

(b) In the event that the Retail Chilled Water Facilities malfunction or temporarily cease operating, the Retail Owner may cause the regulated bypass separating the Retail Chilled Water Facilities and the Hotel Chilled Water Facilities (the "Bypass") to be opened so as to enable the Hotel Chilled Water Facilities to cool the Retail Building during the period of such malfunction

or failure of the Retail Chilled Water Facilities to operate and simultaneously notify the Hotel Owner of such action.

(c) In the event that the Hotel Chilled Water Facilities malfunction or temporarily cease operating, the Hotel Owner may cause the Bypass to be opened so as to enable the Retail Chilled Water Facilities to cool the Hotel Building during the period of such malfunction or failure of the Hotel Chilled Water Facilities to operate and simultaneously notify the Retail Owner of such action.

(d) In the event that either the Retail Chilled Water Facilities or the Hotel Chilled Water Facilities malfunction or cease to operate, the applicable Owner shall undertake to expeditiously repair or replace its chilled water Facilities so as to minimize the period during which the Bypass must remain disconnected and shall discontinue its use of the other Owner's chilled water Facilities promptly upon the repair of its chilled water Facilities. An Owner (the "Assisting Owner") whose chilled water Facilities are cooling the other Owner's portion of the Building may limit the other Owner's use of the Assisting Owner's chilled water Facilities pursuant to this Section 5.10 to the extent necessary to avoid the failure or inability of the Assisting Owner's chilled water Facilities to cool the Assisting Owner's portion of the Building to 76 degrees Fahrenheit. If either of the Retail Chilled Water Facilities or the Hotel Chilled Water Facilities malfunction or cease to operate in a manner which requires that the Bypass be opened for the benefit of either the Retail Building or the Hotel Building four (4) or more times in any calendar year, the benefitting Owner shall pay the other Owner the cost incurred by the other Owner in connection therewith during such calendar year, which shall be equitably determined based on historical usage and costs and shall in all events exclude any consequential damages. In the event that the Owners are unable to agree on the amount thereof, the matter shall be an Arbitrable Dispute. The Owners agree to jointly select a contractor to maintain, service and repair their respective chilled water Facilities and to take all actions reasonably necessary to cause their respective chilled water Facilities to be compatible with one another.

(e) Hotel Owner shall Maintain the shared Facilities described in Section 2.3 of Exhibit 22.1 and the Penthouse HVAC Rooms described in Section 2.2 of Exhibit 22.1 and the Retail Owner shall pay one-half of the costs of such maintenance as a part of the cost allocations provided for in Section 5.3.

ARTICLE 6.

**INDEMNIFICATIONS; LIENS; COMPLIANCE
WITH LAWS; ZONING AND USE;**

6.1 Indemnity by Owners.

(a) Subject to the waiver of subrogation set forth in Section 8.6, each Owner (hereinafter in this Section 6.1, the "Indemnifying Owner") covenants and agrees, at its

sole cost and expense, to indemnify, defend and hold harmless the other Owner, and its officers, directors, partners, members, managers and affiliates, and the successors and assigns of the foregoing (hereinafter in this Section 6.1, collectively, the "Indemnitee"), from and against any and all claims, including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Building or Project Site or Owned Facilities or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement or Facility (including, without limitation, in the case of Hotel Owner, Hotel Owner's use of the Hotel Exclusive Easement Premises and the Hotel Exclusive Easement Improvements and, in the case of Retail Owner, Retail Owner's use of the Retail Exclusive Easement Premises and the Retail Exclusive Easement Improvements), and from and against all reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding.

(b) An Indemnifying Owner's obligation to the Indemnitee pursuant to this Section 6.1 is specifically conditioned upon (i) the Indemnitee notifying the Indemnifying Owner in writing, within a reasonable period of time after it becomes aware of the occurrence of any fact, circumstance, condition or occurrence that is reasonably likely to give rise to a matter falling within the scope of an indemnity under this Section 6.1; provided, however, that failure of the Indemnitee to provide such notice to an Indemnifying Owner shall release the Indemnifying Owner from its obligations pursuant to this Section 6.1 only to the extent of any actual prejudice resulting from such failure to provide notice as required in this Section 6.1(b); and (ii) the Indemnitee not taking (or failing to take) any steps (such as an admission of liability in any form) that would adversely affect the Indemnifying Owner's defense of such claim or its obtaining coverage for the claim under any applicable insurance policies or that might otherwise prevent the Indemnifying Owner from protecting itself and any other Indemnitees. The Indemnifying Owner shall have the right to conduct and control the defense of any matter for which it is providing indemnification by counsel it selects, which counsel shall be subject to the reasonable approval of the party being indemnified. The Indemnitee shall cooperate fully in the defense of the claim and shall provide access to all information, documents and witnesses pertinent to the claim that are under its control. The Indemnifying Owner shall have the right, in its sole discretion, to compromise, settle or otherwise dispose of any claim for which it has accepted and is providing indemnification pursuant to this Agreement; provided that (i) said settlement does not obligate the Indemnitee to do or refrain from doing anything, other than making a lump-sum monetary payment to the plaintiffs (which payment shall be made on behalf of the Indemnitee by, and at the sole cost and expense of, the Indemnifying Owner), and entering into a mutual release with plaintiffs, which instrument shall be subject to the Indemnitee's review and approval and shall not require the Indemnitee to make any admission of wrongdoing or fault, (ii) said settlement will not be a matter of public record and the fact of said settlement will not tend

to prejudice the conduct of other matters in which the Indemnitee is or may be a defendant and (iii) the Indemnifying Owner provides the Indemnitee with evidence, satisfactory to the Indemnitee, that the Indemnifying Owner possesses sufficient funds to fully pay for any such settlement; provided, however, that the Indemnitee shall be informed of all settlement offers and be given a reasonable opportunity to comment on same. Any counsel for the insurance company providing insurance as required under this Agreement against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.

6.2 **Liens.** Each Owner ("Liening Owner") shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien (but not liens arising under Article 10 hereof) arising by reason of its act or acts of its agents, employees and contractors or any work or materials which it or its agents, employees or contractors has ordered (A) on the other Owner's respective portion of the Building or Project Site or Owned Facilities, or (B) on its own portion of the Building or Project Site or Owned Facilities, if the existence or foreclosure of such lien on its own portion of the Building or Project Site or Owned Facilities would adversely affect the use and enjoyment by the other Owner of any Easement benefitting the other Owners or services to be furnished to the other Owners pursuant to Article 5 hereof (such other Owners in (A) or (B) being "Impacted Owners"). The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if: within said thirty (30) day period, (A) such lien cannot be foreclosed, and (B) the Liening Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceeding, and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Impacted Owner either, at the Impacted Owner's option: (a) cash or a surety bond from a responsible surety company acceptable to the Impacted Owner and the Impacted Owner's Mortgagee in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (b) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner and the Impacted Owner's Mortgagee. In any case, the Liening Owner must remove or release such lien prior to its foreclosure or in the event its contest fails. In the event the Liening Owner fails to comply with the foregoing provisions of this Section 6.2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming the Creditor Owner, may take such action as the Creditor Owner may in good faith reasonably deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorney's fees) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under Section 6.2.

6.3 **Compliance With Laws.** The Retail Owner and the Hotel Owner:

(i) shall each comply with all Laws, if noncompliance by such Owner with respect to its portion of the Property or any part thereof or Owned Facilities or areas for which such Owner has been granted an exclusive easement would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owner or for the Building itself or would jeopardize the other Owner's right to occupy or utilize beneficially its respective portion of the Property or any part thereof or Owned Facilities, or would result in the imposition of a lien against any of the property of any other Owner; and

(ii) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property or any portion thereof or the requirements of any insurance coverage on the other Owner's portion of the Property or Owned Facilities if noncompliance by it with respect to its respective portion of the Property or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners (unless the non-complying Owner pays all such increases), or (ii) render any other Owner's portion of the Property or Owned Facilities uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring the other Owner's portion of the Property or Owned Facilities provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession and management of or activities in the other Owner's portion of the Property or Owned Facilities in a manner which is not in compliance with the other Owner's obligations pursuant to this Agreement, such other Owner shall be liable for the costs and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance, and such failure to proceed shall adversely and materially affect the other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur. Any dispute as to the matters described in this Section 6.3 shall constitute an Arbitrable Dispute; provided that nothing contained herein shall limit the ability of either Owner to seek injunctive relief through appropriate legal proceedings.

6.4 **Zoning; Use.**

(a) Without limiting the provisions of Section 6.3, neither the Hotel Owner nor the Retail Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Building, or (iii) take or fail to take any action which, in any case, would violate, or cause the Property not to be in compliance with, the provisions of the Chicago

Zoning Ordinance, as said ordinance may be amended from time to time, if (as to (iii) only) taking such action or failing to take such action could materially adversely affect the other Owner.

(b) The Retail Parcel and Hotel Parcel are now and shall continue to be combined and treated as one zoning lot for the purposes of complying with the zoning ordinance applicable to the Project Site. If the applicable zoning ordinances require that there be a single designated controlling entity for the zoning lot, then for purposes of dealing with the City of Chicago, the Retail Owner shall be such designated entity. The foregoing designation will not be deemed to expand such Owner's rights or reduce the other Owner's rights under this Section 6.4 and in exercising its rights as the controlling entity as set forth above, the Retail Owner shall consult with and obtain the consent of the Hotel Owner prior to taking or acquiescing in any actions which have a negative impact on the zoning status or classification of the Hotel Building or limit the development potential otherwise available to the Hotel Property.

(c) Applications for variations in the application of the provisions of the Chicago Zoning Ordinance applicable to the Project Site which conform to the restrictions contained herein and do not change the permitted use under such ordinances or this Agreement or otherwise adversely affect the other Owner, may be filed and processed solely by the Owner or Owners of the portion of the Building directly affected by such application and shall not require the joinder of the other Owner; provided that a copy of any such application shall be provided to the other Owner promptly upon the filing or processing of such application.

(d) Each Owner shall reasonably cooperate with the other Owner as to requests for zoning variations or amendments conforming with the provisions of this Section 6.4; provided, however, the Owner requesting such cooperation shall pay the reasonable out-of-pocket costs of and shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's cooperation including that arising out of execution of applications or other instruments (excluding from such indemnification matters for which the indemnified party is solely responsible, such as, but not limited to, representations regarding the indemnified parties' identity and existence).

6.5 Use of the Hotel Property. If the Hotel Building is constructed, used, occupied or operated, then the Hotel Building, Hotel Exclusive Easement Improvements and Hotel Owned Facilities shall be designed, constructed and, following the opening of the Hotel Building, operated, managed and Maintained in accordance with the Hotel Operating Standard during such times as the Retail Building is being operated, managed and Maintained in accordance with the Retail Operating Standard, but shall otherwise during such times as the Hotel Operating Standard is not in effect operate the Hotel Building, the Hotel Exclusive Easement Improvements and the Hotel Owned Facilities in accordance with the provisions of this Agreement, to the extent

operated. Nothing contained in this Section 6.5 or elsewhere in this Agreement shall obligate Hotel Owner to construct the Hotel Building, the Hotel Exclusive Easement Improvements or any Hotel Owned Facilities or to open or operate the Hotel Building, the Hotel Exclusive Easement Premises or the Hotel Owned Facilities at any time or for any period of time; provided, however, if construction of the Hotel Building, Hotel Exclusive Easement Improvements and/or Hotel Owned Facilities is commenced then completion of construction of the Hotel Building, Hotel Exclusive Easement Improvements and Hotel Owned Facilities shall be diligently pursued without abandonment until completion substantially in accordance with the Hotel Building Plans.

6.6 Use of the Retail Property. The Retail Owner shall be under no obligation to operate, manage or Maintain the Retail Building, Retail Exclusive Easement Improvements and Retail Owned Facilities in accordance with the Retail Operating Standard, but shall otherwise operate the Retail Building, the Retail Exclusive Easement Improvements and the Retail Owned Facilities in accordance with the provisions of this Agreement, to the extent operated.

6.7 Restrictions on Use of the Polo Airspace. The Hotel Owner shall not under any circumstances locate any additions or expansions of, or rebuild or relocate, the Hotel Building on or in any portion of the Polo Airspace, it being the express understanding of the Owners that the Polo Airspace shall remain as open space, free of any improvements whatsoever at all times during which this Agreement is in effect, except for Retail Owned Facilities permitted to be located in the Polo Easement Area pursuant to Section 3.15. The restrictions on the rights of the Hotel Owner set forth in this Section 6.7 shall (i) bind and burden the Hotel Property and benefit the Retail Property, (ii) be enforceable by the Retail Owner against the Hotel Owner, and its successors and assigns, and against the Hotel Property, and (iii) be irrevocable and perpetual.

6.8 Restrictions on Modifications to Hotel Exterior Elements. The Hotel Owner shall not, without obtaining the prior consent of the Retail Owner, which may be granted or withheld in the Retail Owner's sole discretion, cause the appearance of the Hotel Exterior Elements to materially vary from the Hotel Building Plans. Furthermore, the Retail Owner is granted the additional right to approve, in its sole and absolute discretion, the Hotel Exterior Elements which are contiguous to the Retail Building and visible from Michigan Avenue or the adjacent sidewalks (but only to the extent not included in the approved Hotel Building Plans). Notwithstanding any of the foregoing, from and after such time as Thomas J. Klutznick no longer owns a direct or indirect interest in Retail Owner (or, if Retail Owner is a land trust, its beneficiary), or is deceased or declared mentally incompetent, material changes to the appearance of the Hotel Exterior Elements shall not require the consent of the Retail Owner unless the variance affects or modifies the appearance of those Hotel Exterior Elements which are contiguous to the Retail Building and are visible from Michigan Avenue or the adjacent sidewalks, in which case the consent of the Retail Owner shall not be unreasonably withheld, delayed or conditioned. In the event that Thomas J. Klutznick rejects any proposed Hotel Exterior Elements (or changes thereto) and Hotel Owner fails to modify or amend its proposal with respect to such Hotel Exterior Elements in a manner satisfactory to Thomas J. Klutznick in his sole discretion, he shall meet with Hotel Owner's Chairman to attempt to resolve such differences.

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6.9 **Restrictions on Retail Building Signage and Modifications to Retail Building Facade.** The Retail Owner shall not increase the gross amount of exterior signage included in or attached to the Retail Building if such increase would cause or result in any of (i) the entry canopy to be located on the ground level at Superior Street and related signage as described on the Hotel Plans, (ii) the high level sign to be located near the roof on the west side of the Hotel Building and (iii) the high level sign to be located near the roof on the north side of the Hotel Building being in violation of applicable Laws due to the Building exceeding the gross amount of signage permitted under applicable Laws. The Retail Owner shall not modify the portion of the facade of the Retail Building described in **Exhibit 6.9** (the "Restricted Retail Facade") in a manner which is incompatible with the facade of the Hotel Building immediately adjacent to the Restricted Retail Facade; provided, however, that the foregoing shall not be deemed to require Retail Owner to modify the Restricted Retail Facade to cause it to be compatible with any modifications to the facade of the Hotel Building.

ARTICLE 7.

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REAL ESTATE TAXES

7.1 **Separate Assessment.** Pursuant to the Plat of Subdivision, which was recorded in 1999, commencing with real estate taxes assessed with respect to calendar year 2000 (payable in 2001), (i) the Hotel Property and the Hotel Exclusive Easement Premises (collectively, the "Hotel Tax Parcels") are intended to be taxed as a group of one or more separate parcels of real estate, separate and apart from the Retail Tax Parcels, and (ii) the Retail Property and the Retail Exclusive Easement Premises (collectively, the "Retail Tax Parcels"), shall be taxed as a group of one or more separate parcels of real estate, separate and apart from the Hotel Tax Parcels. The Retail Owner shall pay the Impositions levied upon the Retail Tax Parcels and the Hotel Owner shall pay the Impositions levied upon the Hotel Tax Parcels during any period when the Hotel Tax Parcels are separately assessed and taxed. All Impositions accruing during calendar years after (and not including) 1999 and prior to the separate assessment and taxation of the Retail Tax Parcels and the Hotel Tax Parcels shall be promptly equitably apportioned between the Owners, taking into account whether or not the tax assessor has assessed any value to the air rights included in the Hotel Property and the Hotel Exclusive Easement Premises, and paid by the Owners. The Retail Owner shall pay, when due in 1999 and 2000, without contribution or reimbursement from Hotel Owner, all Impositions assessed with respect to calendar years 1998 and 1999 that are attributable to the Property.

7.2 **Failure to Pay Taxes.** If a Defaulting Owner shall fail to pay any Impositions, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 7 or which is otherwise the responsibility of such Owner, and if such unpaid Imposition is a lien or encumbrance on any portion of the Building or Project Site and any lawful authority would within thirty (30) days thereafter have the right to sell or otherwise foreclose against any portion of the Building or Project Site owned by any other Owner or to impair or extinguish any Easement benefitting any other Owner by reason of such nonpayment, then the Creditor Owner

or Owners may, after ten (10) days written notice to the Defaulting Owner, pay such Imposition, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty amounts that accrued thereon.

7.3 **No Separate Bill.** If at any time after the initial tax division is effected there is not a separate assessed valuation which can be determined by an examination of the Assessor of Cook County's records and tax bills for the Retail Property and the Hotel Property, Impositions for which no separate assessed valuation can be so determined shall be allocated to each Owner not separately assessed and taxed based on the ratio of (a) respective appraised value of each parcel of the Property for which such Owner is obligated to pay real estate taxes (as set forth in Section 7.1) which is not included in a separate tax bill to an Owner, to (b) the total appraised values of such parcels not included in a separate tax bill to an Owner. If the Owners affected by such allocation cannot agree on the ratio to be used, such matter shall be an Arbitrable Dispute, and the arbitrators shall take into account the amount of the real estate taxes applicable to the Retail Building, for the years prior to the entering into of this Agreement.

ARTICLE 8.

INSURANCE

8.1 **Insurance Required.** The Hotel Owner and the Retail Owner shall procure and maintain the following insurance:

(1) **Real and Personal Property** - The Hotel Owner shall keep the Hotel Building (exclusive of the Retail Exclusive Easement Premises and Retail Owned Facilities), Hotel Owned Facilities and Hotel Exclusive Easement Improvements insured for no less than "all risk" coverage on real property and personal property owned by the Hotel Owner or used in the operation of the Hotel for one hundred percent (100%) of the insurable replacement cost thereof. The Retail Owner shall keep the Retail Building (exclusive of the Hotel Exclusive Easement Premises and Hotel Owned Facilities), Retail Exclusive Easement Premises and Retail Owned Facilities insured for no less than "all risk" coverage on real property and personal property owned by the Retail Owner or used in the operation of the Retail Building for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Each Owner shall separately insure on an "all risk" basis and in connection with the insurance obtained pursuant to Section 8.1(3) its loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of first-class commercial or hotel buildings in the City of Chicago, Illinois, and shall pay all premiums for such coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable

co-insurance clause) in accordance with such determination or appraisal and shall also insure costs of demolition and increased costs of construction (which insurance for demolition and increased cost of construction may contain a sublimit of \$2,000,000).

(2) **Public Liability** - The Retail Owner and the Hotel Owner shall each (1) insure against public liability claims and losses on a comprehensive or commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about its portion of the Building (i.e., (x) the Hotel Building (exclusive of the Retail Exclusive Easement Premises and Retail Owned Facilities), the Hotel Exclusive Easement Premises and the Hotel Owned Facilities, in the case of the Hotel Owner, and (y) the Retail Building (exclusive of the Hotel Exclusive Easement Premises and Hotel Owned Facilities) Retail Exclusive Easement Premises and Retail Owned Facilities in the case of the Retail Owner, or as a result of operations thereon (including, without limitation, elevators, escalators, independent contractors, products and completed operations liability and contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained herein), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of buildings used for the applicable purposes for which the Hotel Building and Retail Building (as the case may be) are used in the City of Chicago, Illinois, but in all events for limits, as to each Owner and its portion of the Building, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an amount not less than \$50,000,000 umbrella liability coverage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

(3) **Boiler and Machinery** - The Retail Owner and the Hotel Owner shall each insure their respective boiler and machinery risks, on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus owned or operated by each, consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis for not less than the value of the Property insured.

(4) **Flood and Earthquake** - The Retail Owner and the Hotel Owner, in addition to "all risk" property insurance required under Section 8.1(1), shall jointly insure their respective portions of the Building against earthquake and flood risks in an amount equal to the replacement cost thereof or such lesser amount as then may be reasonably available in the insurance market; both subject, however, to deductibles available and reasonable for such types of insurance. Such insurance shall be included in the policies obtained pursuant to Section 8.1(1) above if a single policy is available for such coverage.

(5) **Builder's Risk** - Each Owner shall carry "all risk" builder's risk insurance (including loss of income and "soft costs") for not less than the completed value of the work then being performed by such Owner or Owners under Article 4, Section 9.3 or 9.4 or for any Alterations which require another Owner's consent under Section 14.1. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of first-class commercial or hotel buildings in the City of Chicago.

(6) **Worker's Compensation**. Each Owner shall carry worker's compensation insurance in amounts as required by Law and employer's liability insurance in not less than the following amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee; bodily injury by disease, \$1,000,000 policy limit.

8.2 **Insurance Companies**. Unless the Retail Owner and the Hotel Owner otherwise agree in writing, but in any event subject to the approval of the Mortgagees, with respect to each of the insurance policies required in Sections 8.1(1), 8.1(3), and 8.1(4) and 8.1(5) (for work being performed under Sections 4.3 or 9.4) hereof, the interest of both Owners shall be insured by the same insurance companies. Such policies may be issued in combination covering one or several items and covering jointly the interests of each Owner. Unless the Retail Owner and Hotel Owner otherwise agree in writing there shall be a single joint policy for insurance required under Sections 8.1(1), 8.1(3), 8.1(4) and 8.1(5) (for work being performed under Sections 4.3 or 9.4 of this Agreement). In the event separate policies are obtained for the insurance to be provided pursuant to Sections 8.1(1) and 8.1(3), a joint loss agreement shall be obtained from the insurer, if available. In the case of any insurance policy covering the Owners jointly, the Owners shall apportion the premium based on the manner in which the insurance company has underwritten the risks, provided, however, that the Owner on whose behalf construction is being performed shall be responsible for the cost of all insurance obtained in connection with such construction pursuant to Section 8.1(5). Policies not required to be a single joint policy may be joint or may be issued separately by the same insurance company with respect to each Owner's interest in the Building. If separate policies are issued, (i) they shall be coordinated so that they contain the same terms and conditions of coverage and policy wording and there are no gaps in coverage, (ii) the insurance company shall agree that the entire Building will be covered among the Owners' separate policies, and (iii) if available, a joint loss agreement shall be obtained from the insurance company. The Owners will consult with one another at least annually (and may retain a consultant to advise them, the costs of employing such consultant to be shared in the same manner as provided in Section 8.4) concerning the advantage and disadvantages to each Owner and the Building as a whole of separate insurance policies as opposed to joint policies, where separate policies are permitted, and will give careful consideration to these matters before choosing to have separate policies. If the Owners do not each agree to have separate policies, where permitted, joint policies shall be obtained. If a joint policy is issued for the insurance required under

Section 8.1(1), then coverage under Section 8.1(3) and 8.1(4) shall, if available as part of a single policy, be included in the same policy. In the case of a joint policy, in the event the Hotel Owner and the Retail Owner cannot agree upon the insurance companies to provide the insurance required under Section 8.1(1), 8.1(3), 8.1(4) and 8.1(5) (where required to be a joint policy), or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall constitute an Arbitrable Dispute. Insurance policies required by Section 8.1 hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/X (or such lesser rating as the Owners may agree) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

8.3 Insurance Provisions. Each policy described in Section 8.1 (other than Section 8.1(6)) hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall insure as "named" insureds the Retail Owner and the Hotel Owner (except that the Owners other than the primary insured shall be "additional" insureds under policies described in 8.1(2)); (iii) shall provide (except for liability insurance described in Section 8.1(2), for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefitted by such endorsement or provision pays such increase; (iv) shall provide, except for liability insurance required by Section 8.1(2), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article 16 hereof, unless the Owners otherwise agree, subject to the consent of the Mortgagees; (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material modification thereof to Mortgagees and all insureds thereunder; (vi) shall include a standard mortgagee endorsement or loss payable clause (except that such clause shall reflect the payment of insurance proceeds to the Depository as set forth in this Agreement) in favor of the Mortgagees reasonably satisfactory to them; and (vii) shall not include a co-insurance clause. Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by the Hotel Owner and the Retail Owner shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office, its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

8.4 Limits of Liability. Insurance specified in this Article 8 or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review

will be required more often than annually (unless there is a substantial change in the Building or operations conducted in the Building), to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred and the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations, or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Sections 8.1(1) (other than loss of rental income insurance), 8.1(3) and 8.1(5) shall not exceed \$25,000 in 1999 equivalent dollars. Where separate policies are issued under Section 8.1(1) or 8.1(4), then deductibles shall be the same, if reasonably possible. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified if justified, based upon said review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of the Mortgagees. With the consent of all Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

8.5 Renewal Policies. Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by each Owner to the other Owner and to the Mortgagees at least ten (10) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this Article 8 or pay its share of the premiums or other costs for any joint policies, then the other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after the Creditor Owner's written demand therefor.

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

ARTICLE 9.

MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

9.1 **Maintenance of Retail Building.** Except as expressly provided hereinafter in this Article 9 in the event of fire or other casualty, and except as provided in and without limiting or diminishing Retail Owner's obligations under Article 4, the Retail Owner shall, at its sole cost and expense, Maintain and keep the Retail Building and all Facilities located in the Retail Property (other than the Hotel Owned Facilities, Hotel Exclusive Easement Improvements and any Facilities located in any portion of the Retail property leased to third party tenants), and the Retail Owned Facilities and Retail Exclusive Easement Improvements in good and safe order and condition in accordance with the terms of this Agreement, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

9.2 **Maintenance of Hotel Building.** Except as expressly provided hereinafter in this Article 9 in the event of fire or other casualty, and except as provided in and without limiting or diminishing Hotel Owner's obligations under Article 4, the Hotel Owner shall, at its sole cost and expense, Maintain and keep the Hotel Building, including all Facilities located in the Hotel Property (other than the Retail Owned Facilities and Retail Exclusive Easement Premises), the flagpoles, canopies and signs described in Section 2.6, Hotel Riser Shaft, Grease Trap, Waste Line, the Hotel Owned Facilities and Hotel Exclusive Easement Improvements in good and safe order and condition in accordance with the terms of this Agreement, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

9.3 **Damage Affecting Only Hotel Building or Retail Building** . If any portion of the Building is damaged by fire or other casualty and (A) if such damage occurs only within the Retail Building but excluding Hotel Exclusive Easement Improvements and Hotel Owned Facilities, (B) if such damage occurs only within the Hotel Building but excluding Retail Exclusive Easement Improvements and Retail Owned Facilities, (C) such damage occurs only to the Retail Exclusive Easement Improvements or the Retail Owned Facilities, or (D) such damage occurs only to the Hotel Exclusive Easement Improvements or the Hotel Owned Facilities, then any such damage shall be repaired and restored by the Owner of the portion of the Building in which any such damage occurs (or, in the case of damage to the Hotel Exclusive Easement Improvements or the Hotel Owned Facilities, by the Hotel Owner and in the case of damage to the Retail Exclusive Easement Improvements or the Retail Owned Facilities, by the Retail Owner) in as

timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article 17 hereof, be entitled to withdraw any insurance proceeds (including deductible amounts and self-insurance amounts) held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. Without limitation of the Creditor Owner's other remedies, if at any time either Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration adversely and materially affecting an Easement in favor of the other Owner, a portion of the other Owner's Building or services to be furnished the other Owners under Article 5 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner and the Mortgagee holding a mortgage encumbering such Defaulting Owner's portion of the Building specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of sixty (60) days after the receipt of such notice (which period shall be extended if the Defaulting Owner or such Mortgagee is diligently attempting to rectify any such failure to diligently proceed with such repair or restoration), any such work of repair or restoration is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same, provided, however, such Creditor Owner shall give notice to the Mortgagee holding a mortgage encumbering such Defaulting Owner's portion of the Building. The Creditor Owner in so performing such repair and restoration shall, in accordance with and following the satisfaction by such Owner of the conditions to disbursement set forth in Article 17 hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of said insurance proceeds. Repair and restoration under this Section 9.3 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owner's consent if the damaged improvements are being restored substantially in accordance with the Plans, except for modifications required by law or necessitated by then existing construction techniques or methods, or if such consent would not otherwise be required under Article 14.

9.4 Joint Damage. If the Building is damaged by fire or other casualty and if the provisions of Section 9.3 hereof are not applicable because the nature of the damage is such that it falls within more than one of the categories set forth in clause (A), (B), (C) or (D) of Section 9.3, then to the extent such damage does fall within any of such categories, the repair and restoration of that portion of such damage which does fall solely within any such categories shall be the responsibility of the Owner who would have been responsible for said restoration under Section 9.3 (the "Affected Owner"). Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Affected Owner by a contractor selected by the Affected Owner, which selection shall be subject to the approval of its Mortgagee if the approximate cost of the repair and restoration is greater than \$500,000 (in 1999 equivalent dollars). The plans and specifications for that portion of the repair and restoration to be performed by an Affected Owner shall be prepared by an Architect

engaged by said Affected Owner satisfying the requirements of Section 4.2 as to experience and qualifications, unless the Affected Owner otherwise agrees upon another person or entity to prepare them, subject to the approval of their Mortgagees. Such plans and specifications shall provide for damaged portions of the Building to be rebuilt as nearly identical as commercially practicable to the damaged portion of Building as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of their Mortgagees subject to such variations therefrom as would be permitted under Section 14.1 and subject to the consent of other Owners under Section 14.1 where required. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to the Affected Owner, and its Mortgagee, a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Affected Owner otherwise agrees (subject to the approval of their Mortgagees if the approximate cost of the repair and restoration is greater than \$500,000 in 1999 equivalent dollars), any contractor or contractors shall work under the supervision of an Architect, and an Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Affected Owner, and its Mortgagee, as such repair and restoration progresses, to disburse in accordance with Article 17 hereof, the insurance proceeds (including deductible and self-insured amounts) held by the Depository and any other monies deposited with the Depository pursuant to Section 9.5 hereof for application against the cost and expense of any such repair and restoration. The Affected Owner shall keep the other Owner reasonably informed as to the timing and status of any repairs undertaken by the Affected Owner.

9.5 Cost of Repairs. If the cost and expense of performing any repair and restoration provided for in Section 9.4 hereof shall exceed the amount of available insurance proceeds if any, paid by reason of the damage, including deductible amounts, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the Owners as follows: the Owner required to maintain insurance coverage with respect to the item or items requiring repair or restoration shall bear the full amount of any shortfall in insurance proceeds awarded with respect to said item or items, based upon an itemized breakdown of the insurance award which shall be furnished by the insurance carriers. If an Owner has not carried the insurance required under Article 8 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

9.6 Deposit of Costs. In any instance of repair or restoration pursuant to Sections 9.3 or 9.4 hereof, the Hotel Owner or the Retail Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum has theretofore been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with

the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 9.5. Any Owner maintaining deductible amounts or retained insurance risk shall deposit the deductible amounts or the amount of the retained insurance risk. In lieu of depositing its share of such excess amount or such self-insured or deductible amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owner and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or an irrevocable loan commitment, satisfactory to the other Owner and the Mortgagees, issued by a responsible lending institution to disburse an amount equal to such Owner's share of such excess, self-insured or deductible amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses, in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost and expenses of the work. If an Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 9.6, or fails to deliver the security provided for above within ten (10) days after receipt of the other Owner's written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

9.7 Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by such Owner or by such Owner's insurance company bears to the total insurance proceeds made available by the insurer for the repair and restoration or, if the insurance is provided by a single policy covering the Building, then the ratio of insurance proceeds attributed to such Owner's portion of the Building and Owned Facilities by the insurer or the Owners to the total insurance proceeds made available by the insurer or the Owners for the repair and restoration. The rights of the Owners to payment of excess insurance proceeds, if any, shall be subject to the provisions of Section 20.11. For purposes of this Section 9.7, insurance proceeds include deductible amounts.

9.8 Agreement Not to Repair. If the Building is damaged and the Retail Owner and the Hotel Owner agree not to rebuild, repair or restore the Building, subject to the prior written approval of the Mortgagees of the Retail Owner and the Hotel Owner as to the specific terms of such agreement in each instance, then the Building shall be demolished to the extent necessary to comply with all applicable Laws. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner or by such Owner's

insurance company to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Building, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building and Owned Facilities to the total insurance proceeds paid by reason of such damage. If the Owners agree not to rebuild, repair or restore the Building, the rights of the Owners to receive available insurance proceeds, if any, shall be subject to the rights of the Mortgagees with respect to the applicable Owner's share of any such available insurance proceeds. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 9.4, 9.5, 9.6 and 9.9 are applicable except that demolition, and not construction, shall be performed. In the event the Retail Owner and the Hotel Owner agree not to rebuild the Building, subject to the prior written approval of the Mortgagees of the Retail Owner and the Hotel Owner as to the specific terms of such agreement in each instance, they may also make provision for sale of the Project Site by the Hotel Owner and the Retail Owner and distribution of sale proceeds. If the parties proceed in accordance with the preceding sentence, then the agreement between the parties shall also provide for the termination of this Agreement. If the parties agree to a sale of the Project Site, the allocation of proceeds between the Retail Owner and the Hotel Owner shall be based on the relative values immediately prior to the casualty (and making the assumption for purposes of valuation that this Agreement would remain in effect at all times thereafter) of (i) the Hotel Building (exclusive of the Retail Exclusive Easement Improvements), the Hotel Exclusive Easement Improvements and the Hotel Owned Facilities and (ii) the Retail Building (exclusive of the Hotel Exclusive Easement Improvements), the Retail Exclusive Easement Improvements and the Retail Owned Facilities. Any dispute as to such relative values shall be an Arbitrable Dispute.

9.9 **Costs Defined.** For purposes of this Article 9, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 10.

LIENS, DEBTS, INTEREST AND REMEDIES

10.1 **Failure to Perform.** If, at any time, any Owner fails within thirty (30) days after notice or demand (unless a shorter period is provided for herein) to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Agreement (thereby becoming a Defaulting Owner), then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) a lien against the portion of the Building or Project Site owned by the Defaulting Owner and (ii) for a default under Article 9, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Building or Project Site or otherwise under insurance policies carried pursuant to Article 8 hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to

foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("**Default Amount**") shall have been paid in full. A Creditor Owner's liens provided for in this Section 10.1, shall be superior to and take precedence over any mortgage, trust deed or other encumbrance (including a mortgage or trust deed on a condominium unit) other than a Prior Lien constituting a lien on the portion of the Building or Project Site owned by the Defaulting Owner. A "**Prior Lien**" means a Mortgage (including a mortgage or trust deed on a condominium unit) which has been recorded against the Building or Project Site, against a portion of either, or against any leasehold interest under the Stern Ground Lease or the Chicago Avenue Ground Lease, as the case may be.

10.2 No Diminution of Lien. No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under Article 10) shall in any way affect or diminish any lien arising pursuant to this Article 10, and any lien which would have arisen against any property pursuant to this Article 10 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under Article 10) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

10.3 Mortgagee's Subrogation. The holder of a mortgage or trust deed on all or any portion of the Retail Property or of all or any portion of the Hotel Property shall be subrogated to the position of the holder of any lien arising pursuant to this Article 10 affecting the property secured by its mortgage upon payment of the amount secured by such lien.

10.4 Interest Rate. Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full (or until the amount not in dispute is paid by the Defaulting Owner and the sums in dispute are deposited by the Defaulting Owner with the court or arbitrator, with interest on such sums to be disbursed in proportion to the principal amount disbursed), at a rate of interest equal to the lesser of: (a) the floating rate which is equal to four percent (4%) per annum in excess of the "prime rate" or "corporate base rate" from time to time published in the Wall Street Journal (or, if not so published, a similar or equivalent rate or publication), or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a base or reference rate is not announced or available, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

10.5 Cumulative Remedies. Subject to the limitations set forth in Section 10.7 hereof, the rights and remedies of an Owner provided for in this Article 10 or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Agreement. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or

restrict the exercise of any other right or remedy provided hereunder. The lien rights granted under Section 10.1 shall not preclude filing of a lien under the Illinois Mechanic's Lien Act with respect to the Creditor Owner's performance pursuant to Articles 4 and 5 of this Agreement, as permitted by Section 20.13 of this Agreement.

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

10.7 **Period of Limitation.** Actions to enforce any right, claim or lien under this Agreement shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute.

10.8 **Subleases.** Notwithstanding anything to the contrary set forth in the Sublease or in this Agreement, no default under the terms of this Agreement shall under any circumstances or conditions be deemed a default under the Sublease.

ARTICLE 11.

ARBITRATION

11.1 **Disputes Subject to Arbitration; Arbitration Procedure.** All questions, differences, disputes, claims or controversies arising among or between Owners under this Agreement:

- (1) constituting a monetary claim involving an amount as to any one claim not exceeding \$500,000 (in 1999 equivalent dollars); or
- (2) expressly made an Arbitrable Dispute or subject to arbitration under this Article 11 by the terms of this Agreement; or
- (3) involving any of the following matters:
 - (i) other failure to agree on a matter described in Section 2.8 or 16.1 which this Agreement expressly requires the Owners to jointly decide or agree upon;
 - (ii) disputes arising generally under Articles 4, 5, 7, 8, 9, 13 or 14; or
 - (iii) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to Arbitration,

which (with respect to any of such matters) shall be not resolved within forty-five (45) days after it shall arise (or such other shorter or longer time period expressly provided herein), shall be submitted for arbitration to a panel of three (3) arbitrators at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules; provided, however, in all cases the arbitrators so appointed shall be experienced knowledgeable professionals in the applicable industry as it relates to the subject matter to which such arbitration applies. Similarly, any arbitrator appointed in an architectural dispute shall be qualified as respects architecture and similar developments. Each Owner who is a party to the arbitration shall cause an arbitrator to be selected within seven (7) Business Days following notice from or to such Owner that an Arbitrable Dispute exists, the two arbitrators shall choose the third arbitrator within five (5) Business Days following their appointment and proceedings shall commence within five (5) Business Days after selection of the third arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under clauses (3)(i), (ii) or (iii) above, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrators shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners. In the case of any other matter which the parties fail to agree upon which this Agreement expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrators shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of the issue. Any award issued by the arbitrators shall take into account and be consistent with any standards, terms or conditions contained in this Agreement expressly governing the subject of the dispute, except in those instances where the arbitrators are required to select an individual, company or entity from those selected by the Owners and none meets such standards, terms or conditions. Arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the Mortgagees of the filing of a claim and demand in arbitration within five (5) days thereafter. Owners may not seek injunctive relief in the arbitration. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners involved in the arbitration; provided that the arbitrators may include in their award any of the fees and costs of arbitration. Any award of the arbitrators shall be final and binding upon the Owners and judgment thereon shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 10.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes which are not easily divisible, the dispute shall not be submitted to arbitration.

11.2 Monetary Adjustment (Equivalent Dollars). For purposes of this Agreement, "1999 equivalent dollars" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 1999. The 1999 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the difference obtained by subtracting

(x) the Consumer Price Index for July, 1999 from (y), the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for July, 1999. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago, All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

ARTICLE 12.

UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, enemy action, civil commotion, strikes (provided, however, any strikes relating to an Owner's failure to use union labor and strikes and lockouts affecting only an Owner shall not constitute Unavoidable Delay), unforeseeable unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. However, if non-performance is due to an Unavoidable Delay which does not affect another Owner's self-help remedy which may be otherwise exercised for such non-performance, then notwithstanding such Unavoidable Delay such other Owner shall still be entitled to such remedy with respect to those obligations to have been performed by the Non-Performing Owner (hereinafter defined) which are the subject of Unavoidable Delay; provided that the Owner unable to perform (hereinafter in this Article the "Non-Performing Owner") (i) shall not be subjected to additional costs and expenses (over and above the costs and expenses that would otherwise have been expended by the Non-Performing Owner in performing the obligation in question), by reason of the exercise of the other Owner's self-help remedy and any right to reimbursement which the other Owner may have with respect thereto under this Agreement and (ii) the Non-Performing Owner shall not be a Defaulting Owner by reason of said Unavoidable Delay and the other Owner shall not be entitled to interest or other remedies (other than the self-help remedy described in this Article 12) in connection with said Unavoidable Delay. The Non-Performing Owner shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE 13.

CONDEMNATION

13.1 **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Building or Project Site by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 13, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this Article 13. The Owners shall cooperate with one another to maximize the amount of the Award.

13.2 **Payment of Award to Depository; Temporary Taking Awards .** All Awards resulting from the taking of all or any part of the Building or Project Site, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository by the Owners regardless of the Owner who received the Award and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Section 5.1 or 5.2 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Project Site.

13.3 **Taking of Only One Parcel.** In the event of (A) a taking (other than a temporary taking) of a part of the Retail Property or Retail Owned Facilities, Retail Exclusive Easement Premises or Retail Exclusive Easement Improvements only (not including any Hotel Property, Hotel Owned Facilities, Hotel Exclusive Easement Premises or Hotel Exclusive Easement Improvements) or (B) a taking (other than a temporary taking) of a part of the Hotel Property, Hotel Owned Facilities, Hotel Exclusive Easement Premises or Hotel Exclusive Easement Improvements only (not including any Retail Property, Retail Owned Facilities, Retail Exclusive Easement Premises or Retail Exclusive Easement Improvements), then subject to the provisions of Section 13.6 hereof, the Owner of the portion of the Building or Owned Facilities in which the taking occurred (or in the case of repair or restoration of the Hotel Exclusive Easement Improvements, the Hotel Owner or in the case of repair or restoration of the Retail Exclusive Easement Improvements, the Retail Owner) shall repair and restore the remainder of its portion of the Building or Owned Facilities to form an architectural and functional whole, which must include the equivalent of any non-exclusive easements in favor of the other Owner that may have been "taken." Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Building or Owned Facilities in which the taking occurred (or in the case of repair or restoration of the Hotel Exclusive Easement Improvements, the Hotel Owner or in the case of repair or restoration of the Retail Exclusive Easement Improvements, the Retail Owner). Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 17 hereof and to retain any excess not required for such repair and

restoration; provided, however, that the right of any particular Owner to receive a portion of such excess, if any, shall be subject to the provisions of Section 20.11. If at any time either Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration adversely and materially affecting an Easement in favor of the other Owner or Owners or services to be furnished the other Owners under Article 5 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner and the Mortgagee holding a mortgage encumbering such Defaulting Owner's portion of the Building specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of sixty (60) days after the receipt of such notice (which period shall be extended if the Defaulting Owner or such Mortgagee is diligently attempting to rectify any such failure to diligently proceed with such repair or restoration), any such work of repair or restoration is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same, provided, however, such Creditor Owner shall give notice to the Mortgagee holding a Mortgage encumbering such Defaulting Owner's portion of the Building. The Creditor Owner in so performing such repair and restoration shall, in accordance with and subject to the conditions to disbursement set forth in Article 17 hereof, be entitled to withdraw any Award and any other monies held by the Depository as a result of any such taking for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies. Repair and restoration under this Section 13.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owner's consent if it would not otherwise be required under Article 14.

13.4 Repair and Restoration by All Owners. In the event of a taking other than (A) a temporary taking described in Section 13.2 hereof, (B) a taking described in Section 13.3 hereof, or (C) a taking of all or substantially all of the Building or Project Site, then; subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) jointly approved by the Involved Owners (hereinafter defined). Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of both of the Owners by a contractor or contractors jointly selected by the Owners whose portion of the Building, Hotel Owned Facilities, Hotel Exclusive Easement Improvements, Hotel Exclusive Easement Premises, or Retail Owned Facilities, Retail Exclusive Easement Premises, or Retail Exclusive Easement Improvements are affected ("**Involved Owners**") (subject to the approval of their Mortgagees if the approximate cost of repair and restoration is greater than \$500,000 in 1999 equivalent dollars), except as hereinafter provided. In the event the Involved Owners (with approval of their Mortgagees, when required above) fail to agree upon the selection of a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. If such repair and restoration (a) is to be performed solely in the Retail Building and (b) does not materially affect the Hotel Owner, then

the approval of the Hotel Owner (and approval by its Mortgagee) shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Hotel Owner (and approval by its Mortgagee) be required with respect to the selection of a contractor. In such event, however, the Retail Owner shall consult with the Hotel Owner (and its Mortgagee, if the approximate cost of repair and restoration is greater than \$500,000 in 1999 equivalent dollars) regarding those matters. If such repair and restoration (a) is to be performed solely in the Hotel Building and (b) does not materially affect the Retail Owner, then the approval of the Retail Owner (and its Mortgagees) shall not be required with respect to plans and specifications therefor, nor shall the consent of the Retail Owner (or its Mortgagees) be required with respect to the selection of a contractor. In such event, however, the Hotel Owner shall consult with the Retail Owner (and its Mortgagees, if the approximate cost of the repair and restoration is greater than \$500,000 in 1999 equivalent dollars) regarding those matters. The plans and specifications for such repair and restoration shall be prepared by an Architect jointly selected by the Involved Owners, unless the Involved Owners shall otherwise agree in accordance with instructions given by all Involved Owners, all subject to the approval of their Mortgagees. Such plans and specification shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement are extinguished or materially impaired, then changes shall be made to provide for easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 2 and 3 hereof and for the furnishing of services under Article 5 hereof. The Architect will furnish to each of the Owners (but only if and to the extent such Owner's approval is required) and the Mortgagees a set of such plans and specifications for their approval. Unless the Involved Owners otherwise agree (subject to the approval of their Mortgagees, if the approximate cost of the repair and restoration is greater than \$500,000 in 1999 equivalent dollars), the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owner or Owners in whose portion of the Project Site such repair and restoration is being performed, as such repair and restoration progresses, to disburse, in accordance with Article 17 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

13.5 **Excess Award.** The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6 hereof). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio as the apportionment of the Award to parties with an interest in such Owner's portion of the Project Site in any judicial or administrative proceedings in connection with the taking, bears to the apportionment of the Award to the parties with an interest in the other Owner's portion of the Project Site; provided, however, that the right of the Owners to receive any such excess shall be subject to the provisions of Section 20.11. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that

would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

13.6 **Demolition**. If, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), either the Retail Owner or the Hotel Owner reasonably determines that its portion of the Building no longer can be operated on an economically feasible basis for the uses permitted under this Agreement, then such Owner shall not be obligated to repair or restore its portion of the Building as may be required by Sections 13.3 and 13.4 hereof. However, in such case, such Owner not repairing or restoring shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to provide essential services or Structural Integrity for the other portion of the Building and to provide for easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 2 and 3 hereof and for the furnishing of services under Article 5 hereof. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 13.4 hereof are applicable.

13.7 **Allocation of Award**. In the event of a taking of all or substantially all of the Building or Project Site, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment; provided, however, that the right of the Owners to receive any award and payment shall be subject to the provisions of Section 20.11. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such Award based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

ARTICLE 14.

ALTERATIONS

14.1 **Permitted Alterations**.

(a) An Owner (hereinafter in this Article 14, "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article 14, excluding any work to be performed pursuant to the Construction Coordination Agreement, "**Alterations**") to the part of the Building within such Altering Owner's portion of the Project Site and to such Owner's exclusive easement areas (e.g., the Hotel Exclusive Easement Premises and the Hotel Exclusive Easement Improvements, in the case of the Hotel Owner, and the Retail Exclusive Easement Premises and Retail Exclusive Easement Improvements, in the case of the Retail Owner), provided that such Alterations comply with all of the provisions of this

Article 14. Alterations shall include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 14. Subject to the provisions of Section 5.6, replacement of Facilities may be made by an Altering Owner without consent of the other Owner. The provisions of this Article 14 governing Alterations do not negate or diminish other provisions of this Agreement having to do with additions, improvements or alterations expressly required or permitted in Articles 4, 5, 6, 9 and 13 hereof, which are governed by such provisions unless also designated in such Articles as "Alterations" to be governed by Article 14.

(b) Alterations shall not be made without the prior written consent of the other Owner, which may be refused or granted in the exercise of such Owner's sole discretion, if such Alterations will:

(1) during their performance or upon their completion, materially diminish the benefits afforded to such other Owner by an Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;

(2) during their performance or upon their completion, degrade or diminish services to the other Owner under Article 5; or

(3) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Support.

(c) In addition to the restrictions set forth in Section 14.1(b), the Hotel Owner shall not make Alterations without the consent of the Retail Owner, which may be refused or granted in the exercise of the Retail Owner's sole discretion, if such Alterations will:

(1) materially and adversely affect Retail Owned Facilities, Retail Exclusive Easement Premises, Retail Exclusive Easement Improvements or any Facilities owned by the Retail Owner which may be located in the Hotel Exclusive Easement Premises;

(2) necessitate the erection of additional Structural Support upon or within the Retail Parcel for the support of the Hotel Building; provided, however, that in the event of a total demolition or destruction or substantial redevelopment of the Building, Hotel Owner may request, and Retail Owner shall grant, the right to additional Structural Support located in the Retail Building for the support of the Hotel Building at the sole cost and expense of Hotel Owner, if, and only if, such additional Structural Support requires use of not more than a "*de minimus*" amount of additional space in the Retail Building ("Additional Structural Support Space") and does not have an adverse impact (which, for purposes of this section, shall be deemed to be more than an insubstantial impact) on the use, operation, or enjoyment of the Retail Building or the configuration of tenant spaces in the Retail

Building. Hotel Owner shall lease any Additional Structural Support Space from Retail Owner at market rents applicable to the Retail Building and upon other terms and conditions reasonably satisfactory to Retail Owner. Hotel Owner shall pay all reasonable third party costs and expenses incurred by Retail Owner in connection with any additional Structural Support provided pursuant to this Section 14.1(c)(2); or

(3) unreasonably burden the mechanical systems of the Retail Building.

(d) In addition to the restrictions set forth in Section 14.1(b), the Retail Owner shall not make any Alterations without the consent of the Hotel Owner, which may be refused or granted in the exercise of the Hotel Owner's sole discretion, if such Alterations will:

(1) materially and adversely affect Hotel Owned Facilities, Hotel Exclusive Easement Premises, Hotel Exclusive Easement Improvements or any Facilities owned by the Hotel Owner which may be located in the Retail Exclusive Easement Premises;

(2) necessitate the erection of additional Structural Support upon or within the Hotel Parcel for the support of the Retail Building;

(3) unreasonably burden the mechanical systems of the Hotel Building; or

(4) alter the portion of the facade of the Building described in **Exhibit 14.1(d)** or the size, configuration or shape of, or the materials used in the construction of, the exterior of the portion of the Building described in **Exhibit 14.1(d)**.

(e) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of the other Owner) the consent of the other Owner, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owner and its Mortgagee a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 14.1. An Altering Owner may also at any time request confirmation from the other Owner that its consent is not required with respect to proposed Alterations, if such Alterations do not require such Owner's consent and such confirmation shall be given within thirty (30) days after an appropriately documented request is made. The failure to respond during such 30 day period shall be deemed confirmation. If such other Owner consents to such Alterations or does not respond within such 30 day period, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owner whose consent is requested will not unreasonably delay its response, having in mind the

scope and complexity of the proposed Alterations, and in any event shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of Section 14.1(b), (c) or (d), then such Owner (the "Objecting Party") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 14.1(b), (c) or (d) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 14.1(b), (c) or (d), or that any proposed Alterations would violate said Sections, then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(f) If any dispute arises between the Retail Owner and the Hotel Owner with respect to whether any Alterations or proposed Alterations violate the provisions of Section 14.1(b), (c) or (d), then such dispute shall be an Arbitrable Dispute.

(g) The Retail Owner and the Hotel Owner, in making Alterations, shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Agreement. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Building (including Alterations within said Owner's exclusive easement areas) in such a manner and at times so as to minimize, to the extent practicable and subject to the reimbursement provisions set forth in this Section 14.1(g), any noise, vibrations, particulate and dust infiltration or other disturbance which would disturb an occupant or occupants of the other portion of the Building (said other portion of the Building including, for these purposes, the other Owner's exclusive easement areas), but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances, which shall not include normal construction activities in a mixed-use building. Any Alterations performed in the other Owner's Building shall be subject to the payment by the Owner performing the work of a reasonable review and monitoring fee to the Owner in whose building the Alterations are being performed. An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance and who pays all costs associated with work at times other than normal business hours, including overtime and delay costs, the Altering Owner shall not

unreasonably refuse to perform work outside normal business hours. Notwithstanding the foregoing, an Altering Owner may be required to perform work outside of normal business hours with no payment or compensation, as described in the Construction Coordination Agreement. At all times an Altering Owner shall take into consideration the reasonable needs and requirements of the other Owner. An Altering Owner, in performing Alterations, shall in addition be subject to the same principles regarding such work as are reflected in the Construction Coordination Agreement, and in the event the Retail Owner is performing Alterations, the Hotel Owner shall be entitled to the benefit of protections and limitations comparable to those that were included for the benefit of the Retail Owner in the Construction Coordination Agreement. Notwithstanding anything to the contrary set forth in this Section 14.1, the terms of the Construction Coordination Agreement shall govern all work to be performed pursuant to the Construction Coordination Agreement.

14.2 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owners. An Altering Owner shall send copies of any building permits to the other Owner at such other Owner's request. If joinder by the Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments and third party costs and expenses (including reasonable attorney's fees and expenses) arising out of the other Owner's execution of the application, permit or other instrument (other than the other Owner's misrepresentations or misstatements). If an Owner fails to execute said application or instruments when required hereunder to do so, which shall in no event be less than thirty (30) days or more than forty (40) days following its receipt of the request to execute such application or instrument, the Altering Owner is hereby irrevocably appointed attorney-in-fact of the other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such other Owner, except in the event a dispute exists as to whether such Alteration is permitted pursuant to the terms of this Agreement.

14.3 **No Liens.** An Owner performing any work required or provided for under this Agreement shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the Hotel Building and the Retail Building and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in Chapter 82 of the Illinois Revised Statutes (said Act and any successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the portion of the Building or Project Site owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 (as the same may be modified, supplemented or replaced from time to time) of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

ARTICLE 15.

ESTOPPEL CERTIFICATES

15.1 **Estoppel Certificates.** Each Owner shall, from time to time, within thirty (30) days after written request from any other Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 20.11(b) hereof, execute, acknowledge and deliver to the requesting party, a certificate ("Estoppel Certificate") stating:

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

(b) Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Agreement (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(c) Whether there are any sums (other than those arising out of the normal course of operation of the Building within the previous ninety [90] days) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amounts thereof;

(d) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 5 hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected amount to be paid by the requesting Owner;

(e) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder), or otherwise known by the Owner, against the enforcement of the requesting Owner's rights hereunder;

(f) The total amount of all liens being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder) by the Owner executing the Estoppel Certificate under the provisions of this Agreement describing the applicable provision or provisions and the details of any such lien claim;

(g) Whether the Owner executing the Estoppel Certificate has requested that a matter be submitted to arbitration, which matter has not been discharged, released or

otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the Estoppel Certificate;

(h) The nature of any arbitration proceeding or finding under Article 11 made within the ninety (90) days preceding the date of such Estoppel Certificate;

(i) The current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 19 hereof; and

(j) Such other facts or conclusions as may be reasonably requested.

If the requesting party is a Mortgagee or prospective Mortgagee, the Owner on whose property it holds or intends to hold a Mortgage will be deemed the "requesting Owner." If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the "requesting Owner." If more than one request is made during any 12 month period, the requesting Owner shall pay all reasonable costs incurred by the other Owner in preparing the Estoppel Certificate.

ARTICLE 16.

DEPOSITARY

16.1 **Appointment of Depositary.** Upon the occurrence of a casualty or a taking affecting the Building, a depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Agreement. The Depositary shall be appointed by the Owners jointly, and may be one of the then three (3) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois. The Depositary shall be entitled to receive from each of the Owners said Owner's equitable share of the Depositary's reasonable fees and expenses for acting as Depositary, and may retain said fees and expenses, free of trust, from monies held by it. Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment.

16.2 **Liability of Depositary.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence or breach of instructions. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation Award or Awards unless the Depositary shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to said insurance proceeds or condemnation Award or Awards, then said Owner may authorize the Depositary to so proceed; further provided, however, that if the Depositary is advised, in writing, that there is

a dispute between the Owners as to whether only one Owner is entitled to said insurance or condemnation Award or Awards, then Depositary shall not disburse funds until receiving the joint written authorization from the Owners. In addition, the Depositary may rely conclusively on any certificate furnished by the Supervising Architect to the Depositary in accordance with the provisions of Section 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

16.3 Interest on Deposited Funds. The Depositary shall have no obligation to pay interest on any monies held by it unless the Depositary shall have given an express written undertaking to do so; or, unless all of the Owners for whose benefit monies are being held have requested, and the Mortgagees of said Owners have concurred, in connection with a specified deposit of funds with the Depositary, that the Depositary undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depositary and said Owners, then the Depositary, within thirty (30) days after request from any of said Owners given to the Depositary and to the other said Owners, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Agreement. Alternatively, the Depositary may invest such monies in a money market account reasonably acceptable to the Owners. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary and held and disbursed by the Depositary in the same manner as such monies. Monies received by the Depositary pursuant to any of the provisions of this Agreement shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

16.4 Indemnification of Depositary. In consideration of the services rendered by Depositary, the Owners jointly and severally hereby agree to indemnify and hold harmless the Depositary from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depositary's duties hereunder or in the defense of any claim or claims made against Depositary by reason of its appointment hereunder, except where due to the negligence of the Depositary or actions not taken in good faith by the Depositary.

16.5 Resignation of Depositary. The Depositary may resign by serving not less than sixty (60) days' prior written notice on all of the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall appoint a substitute who qualifies under Section 16.1 hereof, and the Depositary shall transfer all funds, together with copies of all records, held by it as Depositary to such substitute, at which time its duties as Depositary shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, the Depositary

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may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 16.1 hereof.

ARTICLE 17.

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DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 Disbursement Requests.

(a) Each request for disbursement of insurance proceeds, any Award or other funds for application to the cost of repair, restoration or demolition (the "work") shall be accompanied by a certificate (the "Architect's Certificate") of the architect (the "Supervising Architect") engaged by the Owner performing the work for the purpose of supervising the construction of said work, or by another Person having knowledge of the facts reasonably acceptable to the Owners, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the work:

(1) That the sum requested has either (a) been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of all of the Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, sub-contractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the work up to the date of said certificate and any other information required by the Mechanics' Liens Act and any title insurer affording coverage against mechanics' liens;

(2) That the sum requested, plus all sums previously disbursed, does not exceed the cost of the work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site;

(3) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and

(4) Other information which may from time to time be required by the Mortgagees which is customarily required by mortgagees of comparable first-class hotel or commercial buildings, as may be agreed to by Owners.

(b) Upon:

(1) compliance with the provisions of Section 17.1(a), and

(2) receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Liens Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics' liens from the persons named in the sworn statement, and

(3) approval by the title insurer, the Owners and the Mortgagees of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to the Owners and the Mortgagees) insuring over possible mechanics' lien claims relating to work in place and the continued priority of the liens in favor of the Mortgagees,

the Depository shall, out of the monies so held by the Depository, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's Certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Mortgagees or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Agreement. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Supervising Architect as described in 17.1(a) to the Depository in accordance with the provisions of this Section 17.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.2 No Lien or Consent by Contractor. No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owners and the Mortgagees, shall have any interest in or right to or lien upon any funds held by the Depository. The Owners, with the consent of the Mortgagees, may jointly at any time provide for a different disposition of funds than that provided for in this Agreement, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Owners, with the consent of the Mortgagees, shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

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ARTICLE 18.

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LITIGATION COSTS AND EXPENSES

18.1 **Attorneys' Fees.** In the event of a dispute arising between Retail Owner and Hotel Owner under this Agreement, including any Arbitrable Dispute and any dispute which is the subject of judicial proceedings, the party prevailing in such dispute shall be entitled, in addition to other damages or costs, to receive the reasonable attorneys' fees and expenses and court costs paid or incurred by the prevailing party in connection with any such dispute.

ARTICLE 19.

NOTICES AND APPROVALS

19.1 **Notice to Parties.** Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "notice") that an Owner is required or permitted or desires to give or make or communicate to the other Owner shall be in writing and shall be delivered by hand or sent by (y) by an internationally recognized overnight courier service, or (z) by facsimile transmission (provided that the original of any notice sent by facsimile transmission shall be sent by an internationally recognized overnight courier service) and unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered if delivered by hand, or three Business Days following deposit with an internationally recognized overnight courier service, or upon receipt if sent by facsimile with an original by an internationally recognized overnight courier service (provided that if said facsimile was received after 5:00 p.m. in the local time zone of the recipient on any Business Day, said notice shall not be deemed to have been received until the following Business Day), addressed in each case as follows, or to such address or other address as may be hereafter notified by such parties:

If to the Retail Owner:

c/o 730 North Michigan Avenue Venture
900 North Michigan Avenue
Suite 2050
Chicago, Illinois 60611-1542
Attn: Mr. Thomas J. Klutznick
Telecopy: (312) 944-5987

and to:

McGolden Mile Corporation
% McDonald's Corporation
McDonald's Plaza
Oak Brook, Illinois 60523
Attn: Chris Pieszko
Telecopy: (630) 623-6258

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and to: McGolden Mile Corporation
% McDonald's Corporation
McDonald's Plaza
Oak Brook, Illinois 60523
Attn: Catherine A. Griffin, Esq.
Telecopy: (630) 623-8154

and to any Mortgagee which has complied with the notice provisions of Section 20.1 hereof.

If to the Hotel Owner: Peninsula Chicago LLC.
c/o St. George's Building, 8th Floor
2 Ice House Street, Central
Hong Kong
Attn: Chief Financial Officer
Telecopy: 852-2868-4770

and to: Fulbright & Jaworski L.L.P.
The Hong Kong Club Building
Suite 1901
3A Chater Road, Central
Hong Kong
Attn: A. T. Powers, Esq.
Telecopy: 852-2523-3255

Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, New York 10103
Attn: Douglas Danzig, Esq.
Telecopy: 212-752-5258

and to any Mortgagee which has complied with the notice provisions of Section 20.1 hereof. Any Owner may designate a different address or additional addresses from time to time, provided however it has given at least ten (10) days' advance notice of such change of address. Failure to give notices to an Owner's or Mortgagee's counsel identified above (other than to the New York office of Fulbright & Jaworski LLP or any successor thereto) shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "Owner" of its respective portion of the Building, and the succeeding Owner of that portion of the Building shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's portion of the Building as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City of Chicago department or agency having jurisdiction over City of Chicago addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Building in question.

19.2 **Multiple Owners.** If at any time the interest or estate of the Retail Owner or the Hotel Owner shall be owned by more than one Person (hereinafter collectively referred to as "multiple owners"), the multiple owners shall give to the other Owners a written notice, executed and acknowledged by all of the multiple owners, in form proper for recording, which shall (a) designate one Person to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners, and who shall have the right to act for all purposes as the Retail Owner or the Hotel Owner under this Agreement, and (b) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked (and a substitute agent appointed concurrently with such revocation) by written notice given by all of the multiple owners or their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Article 19 collectively referred to as "legal process"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process as stated above. In no event shall the Stern Lessor or the Chicago Avenue Ground Lessor constitute an Owner for purposes of this Agreement.

ARTICLE 20.

GENERAL

20.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owner in a reasonable manner to promote the efficient operation of each respective portion of the Building and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Building. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as another Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby,

but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder.

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

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

20.4 **Amendments to Agreement.** This Agreement may be amended or terminated only by an instrument signed by the then Retail Owner and the then Hotel Owner, and consented to by the Mortgagees. Any amendment to or termination of this Agreement shall be recorded with the Recorder.

20.5 **Term.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual (or if the law provides for a time limit on any covenant, condition or restriction, then such covenant, condition or restriction shall be enforceable for such shorter period), subject to amendment or termination as set forth in Section 20.4. If the law provides for such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of twenty (20) years, subject to amendment or termination as set forth in Section 20.4.

20.6 **Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement unless the Owner benefitted by such Easement states in writing its intention to abandon the Easement provided the consent of the Mortgagees shall also be required with respect to any such abandonment.

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

20.8 **[Intentionally Omitted].**

20.9 **No Third-Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

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

20.11 **Notice to Mortgagees; Rights of Mortgagee.**

(a) The term "**Mortgage**" as used herein shall mean any mortgage, including leasehold mortgages, (or any trust deed) given primarily to secure the repayment of money owed by the mortgagor (or by one of its partners or members), and constituting a lien on all or a substantial portion of the real property encumbered thereby. The term "**Mortgagee**" as used herein shall mean any Person that is the holder from time to time of any such Mortgage (or the beneficiary under any such trust deed). The term "**First Mortgage**" shall mean a Mortgage that is superior to all other consensual liens and encumbrances.

(b) If a Mortgagee shall have served on the Owners, by personal delivery or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee, and in the case of notices identifying a failure of performance by an Owner, said Owner's Mortgagee shall have the right, but not the obligation, to perform said obligations on behalf of said Owner, and such performance shall have the same effect under this Agreement as though the obligation had been performed by said Owner at the time actually performed by said Owner's Mortgagee. Any Mortgagee as of the date of this Agreement shall be deemed to have properly delivered to the Owners a written notice specifying its name and address. After receipt of such notice from a Mortgagee, no notice thereafter given by either party shall be deemed to have been given unless and until a copy thereof shall have been so given to the Mortgagee. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

(1) the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, upon notice from a Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository in accordance with the provisions of this Agreement (or at said Mortgagee's election, to be held and disbursed by said Mortgagee as though said Mortgagee were the Depository, in accordance with and subject to the terms and provisions of this Agreement).

(2) If an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its Mortgagee and such appointment and action shall be recognized as though the action had been taken by the first Owner at the time the action was actually taken by said Owner's Mortgagee.

(c) Notwithstanding anything to the contrary specified in this Agreement (including this Section 20.11), no Owner need give any notice to more than two Mortgagees or any mortgagee or trustee under a mortgage or trust deed other than a "Mortgage" as defined in paragraph (a) above.

20.12 Coordination with Tenants.

(a) Unless the Retail Owner otherwise agrees in writing in each case, and except in an Emergency Situation, the Hotel Owner acknowledges that the Retail Owner shall be afforded the opportunity to coordinate all requests and contacts between the Hotel Owner and tenants of the Retail Building relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Agreement or with respect to any other matters arising under or pursuant to this Agreement; provided, however, any such coordination shall not render the Retail Owner liable either to such tenants of the Retail Building or the Hotel Owner for acts of either other party.

(b) Unless the Hotel Owner otherwise agrees in writing in each case, and except in an Emergency Situation, the Retail Owner acknowledges that the Hotel Owner shall be afforded the opportunity to coordinate all requests and contacts between the Retail Owner and tenants or occupants of the Hotel Building relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Agreement or with respect to any other matters arising under or pursuant to this Agreement; provided, however, any such coordination shall not render the Hotel Owner liable either to such tenants or occupants of the Hotel Building or the Retail Owner for acts of either other party.

20.13 Waiver of Mechanic's Liens by Owners. The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of, or right to, liens, which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to the Property or improvements owned by any other Owner or any part thereof, or with respect to the estate or interest of any person whatsoever in the Property or improvements owned by any other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery furnished or to be furnished thereto pursuant to this Agreement, by the Owners, their successors, assigns, materialmen, contractors or subcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to Article 4 or Article 5 of this Agreement. The parties agree that

the legal effect of this Agreement is that no mechanic's lien or claim may be filed or maintained by any Owner under the Illinois Mechanic's Lien Act with respect to that portion of the Property or improvements owned by any other Owner, except as set forth above with regard to Articles 4 and 5 of this Agreement. The provisions of this Section 20.13 are not intended to waive any lien created under Article 10.

20.14 **Binding Effect.** The Easements, covenants and restrictions created under this Agreement and all terms and provisions hereof shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

20.15 **Approvals, Etc.** Except to the extent otherwise provided in this Agreement, when any approval, consent or authorization is requested or required under this Agreement, such approval, consent or authorization shall not be unreasonably withheld, delayed or conditioned, nor will a charge be required therefor.

ARTICLE 21.

LIMITATION OF LIABILITY

21.1 **Limitation of Liability.** The liability under this Agreement of an Owner (including any beneficiary of an Owner which is a land trust) shall be limited to and enforceable solely against the assets of the applicable Owner constituting an interest in the Property or Owned Facilities (including insurance and condemnation proceeds attributable to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and not other assets of such Owner, except as hereinafter provided in this Section 21.1 and in Sections 10.1 and 10.2. Assets of an Owner which is a partnership do not include the assets of the partners of such partnership Owner, and a negative capital account of a partner in a partnership which is an Owner and an obligation of a partner to contribute capital to the partnership which is an Owner shall not be deemed to be assets of the partnership which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the covenants or conditions contained herein.

21.2 **Transfer of Ownership.** If an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such Owner), then (a) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property, and (b) the Person who succeeds to an Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising

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under this Agreement of such Owner theretofore accruing or which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property. Upon the assumption in writing by a transferee of the transferring Owner's obligations under this Agreement in form reasonably satisfactory to the non-transferring Owner, the transferring Owner shall be released from liability hereunder accruing prior to such transfer.

ARTICLE 22.

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INTERSTITIAL SPACE

22.1 Hotel Owner's Obligations. The Hotel Owner and the Retail Owner acknowledge and agree that as identified on the Hotel Building Plans the fourth level (the "Interstitial Level") of the Hotel Building will include certain areas and improvements which are for the use and benefit of the Retail Owner and the Hotel Owner. The cost of constructing the Interstitial Floor shall be allocated between Hotel Owner and Retail Owner as described on Exhibit 22.1 hereto

ARTICLE 23.

CHICAGO AVENUE GROUND LEASE

In the event Retail Owner acquires title to the property currently leased by Retail Owner pursuant to the Chicago Avenue Ground Lease, Retail Owner agrees to thereafter promptly convey the air rights relating to such property (Lot 7 on the Plat of Subdivision) to Hotel Owner free and clear of any liens or encumbrances other than the Permitted Exceptions (as defined in the Purchase and Sale Agreement) and the lien of this Agreement for no additional consideration. In connection with such conveyance, Retail Owner agrees that Hotel Owner may encumber such Property with a Mortgage.

ARTICLE 24

STERN FEE ESTATE

The Stern Ground Lessor has executed the Plat of Subdivision, thereby subjecting its interest in the Stern Fee Estate to the Plat of Subdivision and the terms and provisions thereof. The Owners agree that the Stern Ground Lease and the Stern Fee Estate are subject to this Agreement and the terms and provisions hereof. If either the Retail Owner or the Hotel Owner, or any parent, subsidiary, controlling person, entity under common ownership or control or any other affiliate of the Retail Owner or the Hotel Owner (collectively, the "Acquiring Party"), acquires the Stern Fee Estate, or any portion thereof, then without further action of the Acquiring Party, the Retail Owner or the Hotel Owner, the Stern Fee Estate, or such portion thereof as may be acquired by the Acquiring Party, shall automatically be confirmed to be subject to this Agreement and the terms and provisions hereof as fully as if the Stern Ground Lessor was a party

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to this Agreement as of the date of the original execution, delivery and recording of this Agreement. The Acquiring Party shall execute such documents as may be necessary to confirm that the Stern Fee Estate, or such portion thereof as may be acquired by the Acquiring Party, is subject to this Agreement and the terms and provisions hereof.

ARTICLE 25

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TRUSTEE EXCULPATION

This Agreement is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this Agreement). It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Agreement is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Agreement or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee contained in this Agreement, either express or implied, all such personal liability, if any, being expressly waived and released. Notwithstanding the foregoing, Trustee shall be personally liable for and affirmatively undertakes the obligation to ensure execution and the delivery of the Trustee's Deed in accordance herewith and all documents required to consummate this transaction.

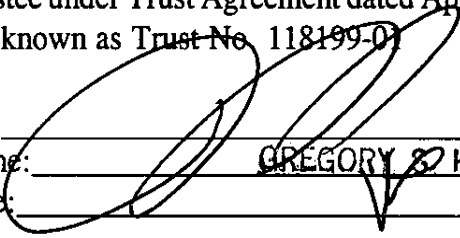
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

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RETAIL OWNER:

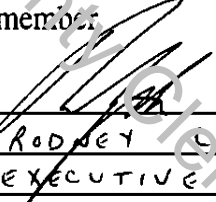
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01

By: 
Name: GREGORY S. KASPRZYSKI
Title: _____

HOTEL OWNER:

PENINSULA CHICAGO LLC, a Delaware limited liability company

By: HSH Chicago, Inc., a Delaware corporation, its member

By: 
Name: RODNEY C. SMYTH
Title: EXECUTIVE VICE PRESIDENT

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MORTGAGEE SUBORDINATION

Credit Lyonnais New York Branch, holder of (i) the Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement dated September 30, 1996 and recorded October 10, 1996 as Document Number 96773883 (the "Mortgage") made by 730 North Michigan Avenue Venture, an Illinois general partnership ("730 NMAV"), American National Bank and Trust Company of Chicago, a National Banking Association, as Trustee under Trust Agreement dated December 19, 1979 and known as Trust Number 4866208 and American National Bank and Trust Company of Chicago, a National Banking Association, as Trustee under Trust Agreement dated April 20, 1994 and known as Trust Number 118199-01 ("Trust 118199"), and (ii) the Assignment of Lessor's Interest in Leases and Rents dated September 5, 1996 and recorded October 10, 1996 as Document Number 96773884 (the Assignment of Leases) , made by 730 NMAV and Trust 118199, hereby consents to the execution and recording of the attached Easement and Operating Agreement and agrees that the Mortgage and Assignment of Leases are and shall be subject and subordinate in all respects thereto.

IN WITNESS WHEREOF, Credit Lyonnais has caused this instrument to be signed by its duly authorized officers on its behalf this 9th day of June, 1999.

CREDIT LYONNAIS NEW YORK BRANCH

By:

Title:

JAMES R. FITZGERALD
SENIOR VICE PRESIDENT

COOK County Clerk's Office

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CHICAGO AVENUE GROUND LESSOR JOINDER

Chicago Avenue Ground Lessor (as defined in the attached Easement and Operating Agreement) hereby (i) joins in to the attached Easement and Operating Agreement for the sole purpose of subjecting the Chicago Avenue Fee Estate (as defined in the attached Easement and Operating Agreement) to the terms and provisions of the attached Easement and Operating Agreement, and (ii) consents to the execution and recording of the attached Easement and Operating Agreement by Retail Owner (as defined in the attached Easement and Operating Agreement) .

IN WITNESS WHEREOF, Chicago Avenue Ground Lessor has caused this instrument to be signed by its duly authorized officers on its behalf this ____ day of JULY 25 1999, 1999.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, as Trustee under
Trust Agreement dated December 19, 1979 and
known as Trust No. 74866208

By: 
Title: TRUST OFFICER

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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CONFIRMATION OF SUBORDINATION

HSBC BANK USA, holder of (i) the Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Fixture Filing and Security Agreement (the "Mortgage") made by Peninsula Chicago LLC dated as of June 30, 1999 and to be recorded subsequent to the recording of the attached Easement and Operating Agreement, and (ii) the Assignment of Leases and Rents (the "Assignment of Leases") made by Peninsula Chicago, LLC, dated as of 99632469, 1999 and to be recorded subsequent to the recording of the attached Easement and Operating Agreement, hereby confirms that the Mortgage and Assignment of Leases are and shall be subject and subordinate to the attached Easement and Operating Agreement.

HSBC BANK USA

By:

Andrew A Daly

Its:

VICE PRESIDENT

ACKNOWLEDGMENT

Retail Owner hereby acknowledges that so long as the Mortgage and Assignment of Leases remain a lien against the Hotel Property, any agreement of Hotel Owner to any allocation of any Award or portion thereof pursuant to Sections 13.5 and 13.7 of the attached Easement and Operating Agreement shall be subject to Hotel Owner obtaining the prior written consent of the holder of the Mortgage and Assignment of Leases thereto.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01

By: _____

Name: _____

Title: _____

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STATE OF New York)
)
COUNTY OF New York)

On this, the 24th day of June, 1999, before me, a Notary Public, personally appeared Andrew Daly, the vice President of HSBC Bank USA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

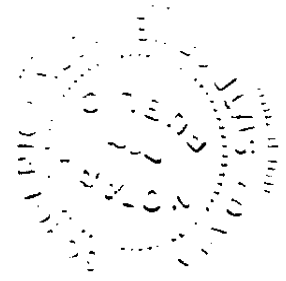
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

Dawn M. Schoenig
Notary Public

My Commission Expires:

DAWN M. SCHOENIG
Notary Public, State of New York
No. 52-4900811
Qualified in Suffolk County aa
Commission Expires August 3, 1999



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CONFIRMATION OF SUBORDINATION 99632467

HSBC BANK USA, holder of (i) the Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Fixture Filing and Security Agreement (the "Mortgage") made by Peninsula Chicago LLC dated as of _____, 1999 and to be recorded subsequent to the recording of the attached Easement and Operating Agreement, and (ii) the Assignment of Leases and Rents (the "Assignment of Leases") made by Peninsula Chicago, LLC, dated as of _____, 1999 and to be recorded subsequent to the recording of the attached Easement and Operating Agreement, hereby confirms that the Mortgage and Assignment of Leases are and shall be subject and subordinate to the attached Easement and Operating Agreement.

HSBC BANK USA

By: _____
Its: _____

ACKNOWLEDGMENT

Retail Owner hereby acknowledges that so long as the Mortgage and Assignment of Leases remain a lien against the Hotel Property, any agreement of Hotel Owner to any allocation of any Award or portion thereof pursuant to Sections 13.5 and 13.7 of the attached Easement and Operating Agreement shall be subject to Hotel Owner obtaining the prior written consent of the holder of the Mortgage and Assignment of Leases thereto.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01

By: _____
Name: _____
Title: _____

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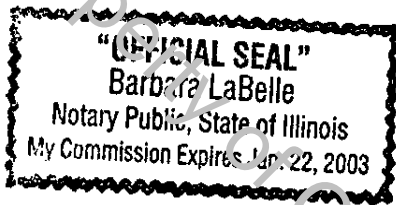
99632467

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

On this, the 15TH day of June, 1999, before me, a Notary Public, personally appeared RODNEY L. SMYTH, the EXEC. VP of HSH, Chicago, Inc., a Delaware corporation, the member of Peninsula Chicago LLC, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]



Barbara LaBelle

Notary Public

My Commission Expires:

UNOFFICIAL COPY 59632467

STATE OF IL)
)
COUNTY OF COOK)

On this, the 11 day of June, 1999, before me, a Notary Public, personally appeared GREGORY S. KASZTHEY of American National Bank and Trust Company of Chicago, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

Therese M. Lohse

Notary Public

My Commission Expires:



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STATE OF NY)
COUNTY OF NY)

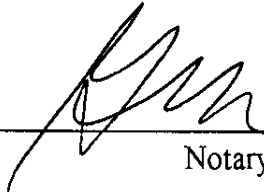
On this, the 9th day of June, 1999, before me, a Notary Public, personally appeared JAMES R. FITZGERALD, the SENIOR VICE PRESIDENT of Credit Lyonnais New York Branch, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

GREGORY J. NUBER
Notary Public, State of New York
No. 01NU5045215

Qualified in New York County
Commission Expires June 12, 1999

[Seal]



Notary Public

My Commission Expires:

Clerk's Office of Cook County

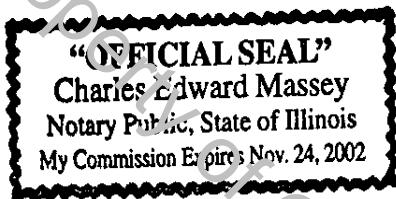
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STATE OF IL)
COUNTY OF COOK)

On this, the 25 day of June, 1999, before me, a Notary Public, personally appeared MARK DEGRAZIA, the TRUST OFFICER of American National Bank and Trust Company of Chicago, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]



Charles Edward Massey
Notary Public

My Commission Expires:

COOK County Clerk's Office

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EXHIBIT A-1

99632467

Legal Description of Retail Fee Parcel

LOTS 1, 1A, 1B, 4, 4B, 4G, 4J, 4L, 5A, AND 5B IN 730 N. MICHIGAN AVENUE SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK, COUNTY, ILLINOIS RECORDED JUNE 30, 1999 AS DOCUMENT NO. 99-631468.

342661_1

TAX NUMBERS:

17-10-102-003
17-10-102-004
17-10-102-005
17-10-102-006
17-10-102-007
17-10-102-008
17-10-102-009
17-10-102-010
17-10-102-011
17-10-102-012
17-10-102-013
17-10-102-014
17-10-102-015
17-10-102-016
17-10-102-021
17-10-102-022
17-10-102-023
17-10-102-024
17-10-102-028
17-10-102-029
17-10-102-030
17-10-102-031
17-10-102-032

730 N. Michigan
Ave.

Chg. St

Property of Cook County Clerk's Office

UNOFFICIAL COPY

99672467

EXHIBIT A-2

Legal Description of Stern Fee Estate

LOTS 2, 2A, 2B, 4F, 4K, 5, 8, AND 8A IN 730 N. MICHIGAN AVENUE SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL ½ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK, COUNTY, ILLINOIS RECORDED JUNE 30, 1999 AS DOCUMENT NO. 99-631468.

342661_1

TAX NUMBERS:

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17-10-102-029
17-10-102-030
17-10-102-031
17-10-102-032

730 N. Michigan
Ave.

Chgo, Il. 60611

Property of Cook County Clerk's Office

UNOFFICIAL COPY 99632467

EXHIBIT A-3

Legal Description of Chicago Avenue Fee Estate

LOT 3 AND 7 IN 730 N. MICHIGAN AVENUE SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL ½ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK, COUNTY, ILLINOIS RECORDED JUNE 20 1999 AS DOCUMENT NO. 99-631468.

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TAX NUMBERS:

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17-10-102-029
17-10-102-030
17-10-102-031
17-10-102-032

730 N. Michigan
Ave
Chgo; Il. 60611-

Property of COOK County Clerk's Office

EXHIBIT B-1

Legal Description of Hotel Fee Parcel

LOTS 4A, 4C, 4D, 4H, AND 6 IN 730 N. MICHIGAN AVENUE SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK, COUNTY, ILLINOIS RECORDED JUNE 30, 1999 AS DOCUMENT NO. ~~99-48~~
99631468

342661_1

TAX NUMBERS:

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17-10-102-031
17-10-102-032

730 N. Michigan
Ave
Chgo Il. 60611

Property of Cook County Clerk's Office

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99632467

EXHIBIT B-2

Legal Description of Hotel Leased Parcel

PARCEL 2A

LEASEHOLD ESTATE AS CREATED BY A CERTAIN LEASE MADE AS OF June 11, 1999 BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 20, 1994 AND KNOWN AS TRUST NO. 118199-01 AND PENINSULA CHICAGO LLC AS DISCLOSED BY A MEMORANDUM THEREOF DATED June 11, 1999 AND RECORDED July 7, 1999 AS DOCUMENT NUMBER 99 632462 WHICH SUBLEASES A PART OF THE PREMISES DEMISED BY ROBERT L. STERN TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER A TRUST AGREEMENT DATED APRIL 20, 1994 AND KNOWN AS TRUST NUMBER 118199-01 UNDER THAT CERTAIN AGREEMENT TO LEASE DATED MAY 10, 1994 AS DISCLOSED BY A MEMORANDUM OF LEASE DATED MAY 31, 1994 RECORDED JUNE 6, 1994 AS DOCUMENT NUMBER 94501549 WHICH DEMISES THE LEASEHOLD ESTATE IN THE FOLLOWING PARCELS:

LOTS 4F, 4K, 8, AND 8A IN 730 N. MICHIGAN SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL $\frac{1}{2}$ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED 12/31/99 AS DOCUMENT NUMBER 99631468.

PARCEL 2B:

LEASEHOLD ESTATE AS CREATED BY A CERTAIN LEASE MADE AS OF Feb. 10, 1999 BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 20, 1994 AND KNOWN AS TRUST NUMBER 118199-01 AND PENINSULA CHICAGO LLC AS DISCLOSED BY A MEMORANDUM THEREOF DATED Feb 10, 1999 AND RECORDED July 1, 1999 AS DOCUMENT NO. 99 632462 WHICH SUBLEASES A PART OF THE PREMISES DEMISED BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED AS OF DECEMBER 19, 1979 AND KNOWN AS TRUST NUMBER 48662-08 TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 20, 1994 AND KNOWN AS TRUST NUMBER 118199-01 UNDER THAT CERTAIN AGREEMENT TO LEASE DATED AS OF JANUARY 1, 1996 AS DISCLOSED BY A MEMORANDUM OF LEASE RECORDED JANUARY 24, 1996 AS DOCUMENT NUMBER 96065184 WHICH DEMISES THE LEASEHOLD ESTATE IN THE FOLLOWING PARCELS:

LOT 7 IN 730 N. MICHIGAN SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL $\frac{1}{2}$ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED 12/31/99 AS DOCUMENT NUMBER 99631468.

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Exhibit B continued

TAX NUMBERS:

17-10-102-003
17-10-102-004
17-10-102-005
17-10-102-006
17-10-102-007
17-10-102-008
17-10-102-009
17-10-102-010
17-10-102-011
17-10-102-012
17-10-102-013
17-10-102-014
17-10-102-015
17-10-102-016
17-10-102-021
17-10-102-022
17-10-102-023
17-10-102-024
17-10-102-028
17-10-102-029
17-10-102-030
17-10-102-031
17-10-102-032

730 N. Michigan Ave.
Chicago, Illinois
60611

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EXHIBIT D HOTEL BUILDING PLANS

Page No.	Description	Date
AVL4EL3	Elevations of projection screens	4/1/99
AVL4E	Electrical plan of ballroom	4/1/99
AVL4E2	Electrical plan of piazza	4/1/99
AVL4E3	Electrical plan of LaCave	4/1/99
AVL51	AV rm & speaker details	4/1/99
AVL5RCP	Ballroom RCP - speakers, etc.	4/1/99
AVL5E	Electrical plan of lobby	4/1/99
AVL5E2	Electrical plan of restaurant	4/1/99
AVL5BAR	Electrical plan of bar & cabinet details	3/15/99
AVL6ELEC	Elec plan-prefunction & meeting	3/15/99
AVL6RCP	RCP of mtg rms & elec plan of ELV rm	4/1/99
AVL6E+RCP	L6 mtg rm & prefunction elec & RCP	4/1/99
AVL6ELV	L6 ELV rm	4/1/99
AVL6BQ1	Mtg rm banquet layout 1	4/1/99
AVL6BQ2	Mtg rm banquet layout 2	4/1/99
AVL6TH1	Mtg rm theatre layout 1	4/1/99
AVL6TH2	Mtg rm theatre layout 2	4/1/99
AVL6SEM		4/1/99
INAR	Mtg rm seminar layout	
AVL6SEC		4/1/99
TION	Mtg rm sections (3)	4/1/99
AVL6EL	Elev proj screens-mtg rms	4/1/99
AVL19ERC	Health club elec & RCP	4/1/99
AVL20ERC	Health club elec & RCP	4/1/99
AVDETA	Various AV system details Sheet A	4/1/99
AVDETB	Various AV system details Sheet A	4/1/99
AVWB	Wallbox details	4/1/99
AVFB1	Floorbox details	4/1/99
SE1-1	LL security plan	4/1/99
SE1-2	Street level security plan	4/1/99
SE1-3	Level 4 security plan	4/1/99
SE1-4	Level 5 security plan	4/1/99
SE1-5	Level 6 security plan	4/1/99
SE1-6	Level 7 security plan	4/1/99
SE1-7	Typical floor security plan	4/1/99
SE1-8	Level 18 security plan	4/1/99
SE1-9	Level 19 security plan	4/1/99
SE1-10	Level 20 security plan	4/1/99

HOTEL PLANS

List of Drawings: including Architectural (Elkus/Manfredi), Structural (TT-CBM) Interior (Babey Moulton Jue & Booth), and Mechanical (ESD), Foodservice/Laundry (Cini.Little), Lighting (Lighting Design), A/V (Shen Milsom), and Security (Glicksman)

Page No.	Description	Date
		4/1/99
A0.1.0	Dwg Index, Symbols & Notes	4/1/99
A0.1.1	Dwg Index, Symbols & Notes	4/1/99
A0.4.0	Demolition Plans, Lower Level	4/1/99
A0.4.1	Demolition Plans, Levels 1,2,3	4/1/99
A0.4.2	Demolition Plan, Level 4	4/1/99
A0.5.0	Demolition Elevations	4/1/99
		4/1/99
C1.0	Site Survey	4/1/99
L1.1	Street Level Landscape Plan	4/1/99
L1.2	Level 4 Terrace Plan	4/1/99
L2.1	Level 4, Terrace Sections	4/1/99
		3/15/99
A1.0.0	Lower Level Plan	4/1/99
A1.1.0	Street Level Plan	3/15/99
A1.2.0	Level 2 Plan (existing)	3/15/99
A1.3.0	Level 3 Plan (existing)	4/1/99
A1.4.0	Level 4 plan	4/1/99
A1.5.0	Level 5 plan	3/15/99
A1.6.0	Level 6 plan	4/1/99
A1.7.0	Level 8 plan	4/1/99
A1.8.0	Level 9 plan	4/1/99
A1.9.0	Level 10 plan	4/1/99
A1.10.0	Level 11 plan	4/1/99
A1.11.0	Level 12 plan	4/1/99
A1.12.0	Level 14 plan	4/1/99
A1.13.0	level 15 plan	4/1/99
A1.14.0	Level 16 plan	4/1/99
A1.15.0	Level 17 plan	4/1/99
A1.16.0	Level 18 plan	4/1/99
A1.17.0	Level 19 plan	4/1/99
A1.18.0	Level 20 plan	4/1/99
A1.19.0	Roof plan	4/1/99
		3/15/99
A2.0.0	Lower Level enlarged plans	4/1/99
A2.1.0	Street level enlarged plans	3/15/99
A2.2.0	Level 4 Enlarged plan	4/1/99
A2.2.1	Level 4 Enlarged plan	4/1/99
A2.2.2	Level 4 Enlarged plan	4/1/99
A2.2.3	Level 4 Enlarged plan	3/15/99
A2.3.0	Level 5 enlarged plan	3/15/99
A2.3.1	Level 5 enlarged plan	3/15/99

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Page No.	Description	Date
A2.3.2	Level 5 enlarged plan	3/15/99
A2.3.3	Level 5 enlarged plan	3/15/99
A2.3.4	Level 5 enlarged plan	3/15/99
A2.4.0	Level 6 enlarged plan	3/15/99
A2.4.1	Level 6 enlarged plan	3/15/99
A2.4.2	Level 6 enlarged plan	3/15/99
A2.5.0	Level 8-18 South corridor plans	3/15/99
A2.5.1	Level 8-18 North corridor plans	3/15/99
A2.5.2	Levels 15-18 North corridor plans	3/15/99
A2.5.3	Service/Corr. enlarged plan	4/1/99
A2.8.0	LL RCP	3/15/99
A2.8.1	LL RCP	3/15/99
A2.9.0	Street level RCP	3/15/99
A2.10.0	Level 4 RCP	3/15/99
A2.10.1	Level 4 RCP	4/1/99
A2.10.2	Level 4 RCP	3/15/99
A2.10.3	Level 4 RCP	4/1/99
A2.11.0	Level 5 RCP	3/15/99
A2.11.1	Level 5 RCP	3/15/99
A2.11.2	Level 5 RCP	3/15/99
A2.11.3	Level 5 RCP	3/15/99
A2.12.0	Level 6 RCP	4/1/99
A2.12.1	Level 6 RCP	4/1/99
A2.12.2	Level 6 RCP	3/15/99
A2.12.3	Level 6 RCP	3/15/99
A2.13.0	Levels 8-18 S. Corridor RCP	4/1/99
A2.13.1	Levels 8-18 N. Corridor RCP	3/15/99
A2.13.2	Levels 5-18 N. Corridor RCP	4/1/99
A2.13.3	Service/Core RCP	4/1/99
A2.16.0	King K1 enlarged & RCP	3/15/99
A2.16.1	King K1H enlarged & RCP.	3/15/99
A2.16.2	King K2 & K4 enlarged & RCP	3/15/99
A2.16.3	King K-3H enlarged & RCP	3/15/99
A2.17.0	DD-1 enlarged & RCP	3/15/99
A2.17.1	DD-1H enlarged & RCP	3/15/99
A2.17.2	DD-2 enlarged & RCP	3/15/99
A2.17.3	DD-2H enlarged & RCP	3/15/99
A2.17.4	DD-3 enlarged & RCP	3/15/99
A2.18.0	ES-1 enlarged & RCP	3/15/99
A2.18.1	ES-2 enlarged & RCP	3/15/99
A2.18.2	ES-2H enlarged & RCP	3/15/99
A2.19.0	S-1,S-3 & S-1H enlarged plan	3/15/99
A2.19.1	S-1,S-3 & S-1H RCP	3/15/99
A2.20.0	S-2 enlarged & RCP	3/15/99

HOTEL PLANS

Page No.	Description	Date
A2.21.0	Grand Suite enlarged plan	3/15/99
A2.21.1	Grand Suite enlarged & RCP	3/15/99
A2.22.0	Peninsula Suite enlarged plan	3/15/99
A2.22.1	Peninsula Suite enlarged & RCP	3/15/99
A2.23.0	Private residence plan	3/15/99
A2.23.1	Private residence RCP	3/15/99
A3.0.1	Michigan Ave. elevation	4/1/99
A3.0.2	Superior Ave. Elevation	4/1/99
A3.0.3	Rush St. elevation	4/1/99
A3.0.4	Chicago Ave. elevation	4/1/99
A3.0.5	Return wall elevations	4/1/99
A3.0.6	Precast panel elevation diagrams	4/1/99
A3.0.7	Precast panel elevation diagrams	4/1/99
A3.2.0	Trasverse Bldg section (looking north)	11/17/98
A3.2.1	Long. Bldg section (looking west)	11/17/98
A3.2.2	Sections thru piazza & ballroom	11/17/98
A3.2.3	Sections thru piazza & ballroom	11/17/98
A3.3.1	N. Michigan elevation & wall sections	4/1/99
A3.3.2	N. Mich. Return wall elev & wall sect.	4/1/99
A3.3.3	N. Michigan elevation & wall sections	4/1/99
A3.3.4	N. Michigan elevation & wall sections	4/1/99
A3.3.6	N. Michigan elevation & wall sections	4/1/99
A3.3.7	Ballroom elevation & wall sections	4/1/99
A3.3.8	Ballroom elevation & wall sections	4/1/99
A3.3.9	Ballroom elevation & wall sections	4/1/99
A3.3.10	N. Michigan elevation & wall sections	4/1/99
A3.3.11	N. Michigan elevation & wall sections	4/1/99
A3.3.12	Wall Sections - Café	11/17/98
A3.3.13	Ballroom elevation & wall sections	4/1/99
A3.3.14	Ballroom elevation & wall sections	4/1/99
A3.3.15	N. Michigan elevation & wall sections	4/1/99
A3.3.16	N. Michigan elevation & wall sections	4/1/99
A3.3.17	Superior elevation & wall sections	4/1/99
A3.3.18	Superior wall sections	4/1/99
A3.3.19	Superior elevation & wall sections	4/1/99
A3.3.21	Corner of Superior & Rush elevations	4/1/99
A3.3.23	Superior elevation & wall sections	4/1/99
A3.3.24	Superior wall sections	4/1/99
A3.3.25	Rush elevation & wall sections	4/1/99
A3.3.26	Rush elevation & wall sections	4/1/99
A3.3.28	Rush elevation & wall sections	4/1/99
A3.3.29	Rush elevation & wall sections	4/1/99
A3.3.30	Rush elevation & wall sections	4/1/99
A3.3.31	Rush elevation & wall sections	4/1/99

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Page No.	Description	Date
A3.3.32	Rush elevation & wall sections	4/1/99
A3.3.33	Rush elevation & wall sections	4/1/99
A3.3.34	Rush elevation & wall sections	4/1/99
A3.3.35	Chicago elevation & wall sections	4/1/99
A3.3.36	Chicago elevation & wall sections	4/1/99
A3.3.37	Chicago elevation & wall sections	4/1/99
A3.3.39	Chicago elevation & wall sections	4/1/99
A3.3.40	Penthouse elevations & details	4/1/99
A3.3.41	Entrance canopy, elev. & sections	4/1/99
A3.4.1	N. Michigan perimeter plan sections	4/1/99
A3.4.2	N. Michigan perimeter plan sections	4/1/99
A3.4.3	N. Michigan Penthouse perim. Sections	4/1/99
A3.4.4	N. Michigan perimeter plan sections	4/1/99
A3.4.5	N. Michigan perimeter plan sections	4/1/99
A3.4.6	Ballroom perimeter plan sections	4/1/99
A3.4.7	Piazza/screen wall perim. Sections	4/1/99
A3.4.8	Superior perimeter plan sections	4/1/99
A3.4.9	Superior perimeter plan sections	4/1/99
A3.4.10	Superior perimeter plan sections	4/1/99
A3.4.11	Superior perimeter plan sections	4/1/99
A3.4.12	Rush & Superior perim. Sections	4/1/99
A3.4.13	Superior entrance perim. Sections	4/1/99
A3.4.14	Rush perimeter plan sections	4/1/99
A3.4.15	Rush perimeter plan sections	4/1/99
A3.4.16	Rush perimeter plan sections	4/1/99
A3.4.17	Rush perimeter plan sections	4/1/99
A3.4.18	Chicago perimeter plan sections	4/1/99
A3.4.19	Chicago perimeter plan sections	4/1/99
A3.4.20	Elevator penthouse perim. Sections	4/1/99
A3.4.21	Rush St. perim. Sections	4/1/99
A3.4.22	Rush St. perim. Sections	4/1/99
A3.4.23	Rush St. pent. perim. Sec.	4/1/99
A3.4.24	Rush St. perim. Sections	4/1/99
A3.4.25	Rush St. perim. Sections	4/1/99
A3.4.26	Rush St. pent. perim. Sec.	4/1/99
A3.4.27	Rush St. perim. Sections	4/1/99
A3.4.28	Rush St. perim. Sections	4/1/99
A3.4.29	Rush St. perim. Sections	4/1/99
A3.4.30	Chic. Ave. pent. Perim. Sec.	4/1/99
A3.4.31	Chic. Ave. perim. Sections	4/1/99
A3.4.32	Chic. Ave. perim. Sections	4/1/99
A3.4.33	Elevator pent. Perim. Sec.	4/1/99
A4.0.0	Window Types	2/8/99

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Page No.	Description	Date
A4.0.1	Window types	4/1/99
A4.0.2	Window types	4/1/99
A4.0.3	Window details	4/1/99
A4.0.4	Window details	4/1/99
A4.1.1	Exterior details	4/1/99
A4.1.2	Exterior details	4/1/99
A4.1.4	Misc. details	4/1/99
A4.2.1	Insulation systems enlarged sections	4/1/99
A5.0.0	Elevator plans, sections	4/1/99
A5.1.0	Elevator plans, sections	4/1/99
A5.2.0	Elevator sections	4/1/99
A5.3.0	Elevator plans, sections	4/1/99
A5.5.0	Stair 4A & 4B plans	4/1/99
A5.6.0	Stair 6A & 6B plans	4/1/99
A5.7.0	Stairs 2,5,7,8,9 plans & sections	4/1/99
A5.8.0	Stair sections	4/1/99
A5.9.0	Stair 6 sections	4/1/99
A6.0.0	Interior elevations	4/1/99
A6.1.0	Interior elevations	4/1/99
A6.2.0	Interior elevations	4/1/99
A7.0.0	Partition types	3/15/99
A7.1.0	Interior details - millwork	4/1/99
A7.1.3	Interior details - misc.	4/1/99
A7.2.1	Interior details - guest rooms	4/1/99
A7.2.2	Interior details - guestrms & corridors	4/1/99
A8.0.0	Door elevations & details	4/1/99
IA0.01	Cover Sheet, Index, Abbreviations	4/1/99
IA1.01	Level 1 floor plan	4/1/99
IA1.02	Level 4 floor plan	4/1/99
IA1.03	Level 5 floor plan	4/1/99
IA1.04	Level 6 floor plan	4/1/99
IA1.05	Level 8 floor plan	4/1/99
IA1.06	Level 9 floor plan	4/1/99
IA1.07	Level 10 floor plan	4/1/99
IA1.08	Level 11 floor plan	4/1/99
IA1.09	Level 12 floor plan	4/1/99
IA1.10	Level 14 floor plan	4/1/99
IA1.11	Level 15 floor plan	4/1/99
IA1.12	Level 16 floor plan	4/1/99