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Cook County Recorder 127.00

## EXHIBIT ATTACHED



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, PARTY WALLS AND EASEMENTS FOR  
THE FIRST AMERICAN BANK BUILDING  
1345 WEST DIVERSEY  
CHICAGO, ILLINOIS**

This Declaration is made and entered into as of the 10<sup>th</sup> day of June, 1999, by First American Bank, an Illinois corporation ("**Declarant**").

WITNESSETH:

WHEREAS, DECLARANT is the owner of the real property legally described on Exhibit A attached hereto (the "**Premises**"); and

WHEREAS, the Premises is improved with a three story building (the "**Building**") consisting of a first floor banking facility, parking garages located on the first floor and fourteen (14) residential apartment units located on the second and third floors of the Building; and

WHEREAS, after the recording of this Declaration, DECLARANT intends to separate the ownership of the Building into two parcels consisting of the Condominium Property as hereinafter defined and the Commercial Property, as hereinafter defined; and

WHEREAS, DECLARANT desires to establish for its own benefit and for the mutual benefit of all future owners, tenants and occupants of the Premises as constituted from time to time, certain mutually beneficial easements, restrictions, obligations and privileges with respect to the use, conduct and maintenance thereof; and

WHEREAS, DECLARANT desires and intends that the owners, tenants, mortgagees, occupants and other persons hereafter acquiring any interest in the Premises shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, obligations, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to facilitate the proper administration of the Premises and the improvements thereon and all of which are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

RECORDING FEE \$ 127<sup>00</sup>  
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NOW, THEREFORE, DECLARANT declares as follows:

## ARTICLE 1 DEFINITIONS

For the purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.1 BOARD. The Board of Directors of the Condominium Association as constituted at any time or from time to time.

1.2 BUILDING. The building commonly known as 1345 West Diversey, and 2750 Wayne Avenue, Chicago, Illinois currently located on the Premises as altered, modified, replaced or improved from time to time.

1.3 BUILDING FACADE. The foundation and exterior walls of the Building, exclusive of the roof.

1.4 CHARGE. Any amount which becomes due and payable from one Owner to the other Owner hereunder.

1.5 COMMERCIAL PROPERTY. Those portions of the Premises which are not included in the Condominium Property, all as legally described on Exhibit B hereto.

1.6 COMMERCIAL PROPERTY FACILITY. Any fixture or item of personal property which is a component part of an operating system which serves the Commercial Property exclusively but which is located in, on or upon the Condominium Property, including, without limitation, ducts, flues, pipes, conduits, wires and meters.

1.7 COMMERCIAL PROPERTY OWNER. The Owner or Owners from time to time of the Commercial Property; provided, that, if at any time the Commercial Property is submitted to the Condominium Property Act of the State of Illinois then for purposes hereof, the Commercial Property Owner shall be deemed to be the condominium association which is responsible for administering the Commercial Property under the condominium declaration recorded with respect to the Commercial Property.

1.8 COMMON PROPERTY AREAS. The sidewalks, driveways and trash storage areas located on the Premises or immediately adjacent thereto and which serve both the Commercial Property and the Condominium Property.

1.9 CONDOMINIUM ASSOCIATION. The Filmstrip Lofts Condominium Association created pursuant to the Condominium Declaration, and its successors and assigns.

1.10 CONDOMINIUM DECLARATION. That certain Declaration of Condominium Ownership and of Easements, Restrictions, Covenants, and By-laws for The Filmstrip Lofts Condominium which is hereafter recorded against the Condominium Property.

1.11 CONDOMINIUM PROPERTY. That portion of the Premises which is subjected to the provisions of the Illinois Condominium Property Act consisting of the residential units and

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garage units, all as more fully designated on Exhibit C attached hereto.

1.12 CONDOMINIUM PROPERTY FACILITY. Any fixture or item of personal property which is a component part of an operating system which serves the Condominium Property exclusively but which is located in, on, or upon the Commercial Property including, without limitation, ducts, flues, pipes, conduits, wires, and meters.

1.13 CONDOMINIUM PROPERTY OWNER. For purposes hereof, the owner of the Condominium Property shall mean the Condominium Association which is responsible for administering the Condominium Property under the Condominium Declaration, provided that prior to the time that the initial Board of the Condominium Association is elected by the owners of the Units, the developer of the Condominium Property shall have the power to act on behalf of the Condominium Association.

1.14 OCCUPANTS: A person or persons, other than an Owner, in possession of a Unit.

1.15 OWNERS. Owner shall mean either the Condominium Property Owner or the Commercial Property Owner, or where the context so requires, either one or both of them.

1.16 PARCELS: The two separate portions of the Premises consisting of the Condominium Property and the Commercial Property.

1.17 SHARED EXPENSES. The cost of furnishing maintenance, repairs, alterations, additions, improvements and replacements to the Building Facade, the Shared Partition and the Shared Facilities and any other costs or expenses which are designated in this Declaration as Shared Expenses.

1.18 SHARED FACILITY. Any component part of any operating system which serves both the Commercial Property and the Condominium Property. Without limiting the foregoing, the Shared Facilities shall include the portion of the roof located above the Commercial Property, and all ducts, flues, pipes, conduit, wires and similar items of property which are located anywhere in the Building and which are part of a system which serves both the Commercial Property and Condominium Property.

1.19 SHARED PARTITION. A partition which separates the Commercial Property from the Condominium Property.

1.20 UNIT. A condominium unit consisting of a residential or parking garage unit in the Condominium Property.

## ARTICLE 2

### PROPERTY SUBJECT TO DECLARATION

2.1 SUBJECT PROPERTY. The Premises shall be subject to the provisions of this Declaration. It is the intention of DECLARANT to convey the Condominium Property to non-related Owners, and from and after the date of such conveyance, each owner of a Unit shall have the right to mortgage or encumber his respective Unit. At any time hereafter, DECLARANT may convey the Commercial Property to non-related Owners and DECLARANT

and/or any subsequent Owner of the Commercial Property shall have the right to mortgage or encumber his respective Parcel. No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Premises or any part thereof, except his own Parcel.

2.2 CONVEYANCES SUBJECT TO DECLARATION. All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any person or entity having at any time any interest or estate in any part of the Premises. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration as fully and completely as though they were set forth in their entirety in any such document.

### ARTICLE 3

#### PARTY WALLS, EASEMENTS AND AGREEMENTS

3.1 EASEMENTS WITH RESPECT TO COMMERCIAL PROPERTY. Subject as hereinafter provided, the following easements are hereby declared with respect to the Commercial Property, for the benefit of the Condominium Property:

(a) Support. A perpetual, non-exclusive easement in and to all structural members, footings, caissons, foundations, exterior walls, columns and beams located within the Commercial Property for the support of all improvements and structures located on or within the Condominium Property.

(b) Condominium Property Facilities. A perpetual, non-exclusive easement to install, use, maintain, repair and replace from time to time the Condominium Property Facilities, provided that such installation, use, maintenance, repair, replacement or removal does not interfere with the reasonable use and enjoyment of the Commercial Property by the Owner of the Commercial Property, its lessees, guests and invitees.

(c) Building Facade Easement. A perpetual, non-exclusive easement to come on, over and across the Building Facade for the purpose of gaining access to those portions of the Building Facade which are part of the Condominium Property, and the roof of the Building, for purposes of performing renovation, maintenance, repairs and replacements thereto including, without limitation, renovation, maintenance, repair and replacement of the exterior walls and windows and maintenance, repairs or replacements to the roof of the Building. The exercise of this easement shall not unreasonably interfere with the right of the Commercial Property Owner to maintain or repair those portions of the Building Facade which are part of the Commercial Property. The Condominium Property Owner shall give prior notice of its intention to exercise its rights under this easement to the Commercial Property Owner, except for emergency situations.

(d) Non-exclusive Easement. A perpetual, non-exclusive easement over and across corridors, stairways, passageways and other means of access located on the

Commercial Property for the purposes of emergency exit from the Building and reasonably exercising the easements declared in this Article.

All of the above described easements shall be subject to the right of the Owner of the Commercial Property to enter upon any of such easement areas for the purpose of maintaining, repairing or replacing any portion of the Commercial Property or for reasonable access to and from other portions of the Commercial Property.

3.2 EASEMENTS WITH RESPECT TO CONDOMINIUM PROPERTY. Subject as hereinafter provided, the following easements are hereby declared with respect to the Condominium Property, for the benefit of the Commercial Property:

(a) Support. A perpetual, non-exclusive easement in and to all structural members, footings, caissons, foundations, exterior walls, columns and beams located within the Condominium Property for the support of all improvements and structures located on or within the Commercial Property.

(b) Commercial Property Facilities. A perpetual, non-exclusive easement to install, use, maintain, repair and replace from time to time the Commercial Property Facilities, provided that such installation, use, maintenance, repair, replacement or removal does not interfere with the reasonable use and enjoyment of the Condominium Property by the Owner of the Condominium Property, its lessees, guests and invitees.

(c) Building Facade Easement. A perpetual, non-exclusive easement to come on, over and across the Building Facade for the purpose of gaining access to those portions of the Building Facade which are part of the Commercial Property, and the roof of the Building, for purposes of performing renovation, maintenance, repairs and replacements thereto including, without limitation, renovation, maintenance, repair and replacement of the exterior walls and windows and maintenance, repairs or replacements to the roof of the Building. The exercise of this easement shall not unreasonably interfere with the right of the Condominium Property Owner to maintain or repair those portions of the Building Facade which are part of the Condominium Property. The Commercial Property Owner shall give prior notice of its intention to exercise its rights under this easement to the Condominium Property Owner, except for emergency situations.

(d) Signage. A perpetual, non-exclusive easement to come on, over and across the Building Facade for the purpose of gaining access to the signage owned by the Commercial Property Owner and located on the northerly portion of the Building. Commercial Property Owner shall have the exclusive right to use, maintain, repair and replace exterior signage on the northerly portions of the Building Facade.

(e) ATM Facility. A perpetual, non-exclusive easement to come on, over and across the Condominium Property to install, use, operate, maintain, repair and replace from time to time the remote banking facility and all conduits, pipes and equipment related thereto which are located on the Condominium Property.

(f) Non-exclusive Easement. A perpetual, non-exclusive easement on, over and across corridors, stairways, passageways and other means of access located on the Condominium Property for the purpose of emergency exit from the Building and reasonably exercising the easements declared in this Article.



(g) Roof Easement. A perpetual, non-exclusive easement to come on, over and across the roof for the purpose of installing, using, operating, maintaining, repairing and replacing from time to time rooftop signage and satellite and other telecommunications equipment and dishes for the benefit of the Commercial Property.

(h) Canopy Easement. A perpetual, non-exclusive easement to come on, over and across the Building Facade for the purpose of installing, using, operating, maintaining, repairing and replacing from time to time, (i) entranceway canopies now or hereafter located at the Building over the entrance to the Commercial Property, and (ii) the canopy over the drive-up facility located on the property immediately west of the Premises and which is attached to the Building.

3.3 EASEMENT FOR ENCROACHMENTS. If by reason of the design, construction, reconstruction, settlement or shifting of the Building or other improvement located on the Premises a portion of the Condominium Property or any improvement thereto encroaches upon any portion of the Commercial Property or any improvement thereto encroaches upon the Condominium Property or any improvement thereon, then there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof. The Owner who is responsible for the maintenance of any encroaching improvement for which an easement for continuance, maintenance, repair and replacement thereof is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Owner who is responsible for the maintenance of the Premises upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such improvement unless otherwise provided in this Declaration.

3.4 UTILITIES. DECLARANT or the Owners may grant easements at any time hereafter for utility, cable and satellite television purposes upon, over, under, along, on and through any portion of the Premises for the purpose of providing the Premises or any part thereof with utility services. All utility conduits now existing or hereafter from time to time constructed upon, over, under, along, on and through the Premises and servicing any portion thereof shall, subject to applicable law and governmental or utility rules or regulation, inure to the benefit of the Premises.

3.5 SPECIFIC UTILITY EASEMENTS. Ameritech Telephone Company, Commonwealth Edison Company, Northern Illinois Gas Company and all other public utilities serving the Premises are hereby granted the right to install, lay, construct, renew, operate, maintain, repair or replace conduits, cables, pipes, wires, transformers, switching apparatus and other equipment in, on, over, under, upon and through the Commercial Property and the Condominium Property where reasonably necessary for the purpose of providing utility services to the Premises, together with the reasonable right of access to and egress from the Premises for said purpose.

3.6 PARTY WALL AGREEMENT. The walls separating the Commercial Property and the Condominium Property, above and below grade are hereby designated Party Walls. The Owners of the Parcels separated by a Party Wall shall in each case be responsible for the maintenance and repair of said Party Wall, including all structural elements and utility lines which serve both of the Parcels separated by a Party Wall. The cost of maintaining and repairing a Party Wall shall be a Shared Expense divided evenly between the Owners of the Parcels separated thereby. In the event that a Party Wall is in need of repair or rebuilding, the same shall be repaired or rebuilt in the same place and with the same materials as existed prior

to the event giving rise to the need for repair or rebuilding. The covenants and rights herein granted, together with the obligations herein imposed are covenants running with the land to remain in full force and effect perpetually; provided that nothing herein contained shall be construed as a conveyance by an Owner of his right in the fee of the Parcel upon which a Party Wall stands. Notwithstanding anything in this Section 3.6 to the contrary, all maintenance and repair to that part of the Party Wall which is the surface of an interior wall of a Parcel or relates to utility lines, ducts, or similar apparatus solely for the benefit of a single Parcel shall be the responsibility of, and shall be paid for by, the Owner of said Parcel.

**3.7 ROOF AGREEMENT.**

(a) The roof shall be part of the Condominium Property and the Owners of the Condominium Property shall be responsible for the maintenance of the roof. Notwithstanding the foregoing, the Commercial Property Owner may cause the roof to be repaired or replaced in the event that the Condominium Property Owner fails to so repair or replace such roof and the Commercial Property Owner has notified the Condominium Property Owner in writing and such failure shall have continued for thirty (30) days after notice. In addition, the Commercial Property Owner reserves the right of access to the roof for purposes of (i) repair and replacement of any heating and air conditioning units located thereon which serve the Commercial Property and (ii) to install, operate, maintain, improve, alter, use, repair and replace any satellite or other telecommunications equipment thereon.

(b) The cost of repairing and maintaining the roof decks on portions of the Condominium Property shall be the responsibility of each individual Owner of the Unit.

(c) Except for the rights of the Commercial Property Owner specifically reserved hereunder, no Owner shall be permitted to place, secure or install a satellite dish which is greater than 18 inches in diameter on the roof without the express written approval of the Board and the Commercial Property Owner.

(d) Any Owner who shall penetrate the roof of any Unit must notify the Board in writing as to the nature of the penetration and shall be responsible with respect to any and all damage caused thereby.

**3.8 RESERVED RIGHTS OF DECLARANT.** At all times hereafter until the conveyance of the last Unit to an owner other than DECLARANT, DECLARANT, its agents, successors and assigns shall have the right to (a) erect and maintain on the Premises any advertising signs, banners, lighting and other sales and rental devices for the purpose of aiding the sale or leasing of the Units, (b) maintain sales, business and construction offices, and models on the Premises to facilitate the sale and/or rental of the Units and completion of or improvements to the Units, and common areas of the Condominium Property, (c) ingress and egress to and from portions of the Condominium Property in connection with the sale or leasing of the Units, (d) store construction material on the Premises when and where it deems such necessary in conjunction with the renovation, repair, maintenance or reconstruction of all or any part of the Premises, and (e) avail itself of all utilities and utility conduits serving the Premises or any portion thereof, without the consent of any owner, the Condominium Association or any mortgagee of a portion of the Condominium Property.

**3.9 LIMITATIONS UPON RIGHTS OF USE AND ENJOYMENT.** The rights of use and enjoyment created hereby shall be limited by and subject to the following:



(a) The right of DECLARANT or the Commercial Property Owner to prescribe rules and regulations for the use of the Building, Shared Facilities and the Shared Partition.

(b) The right of DECLARANT or the Owners hereunder, or as provided in the Bylaws of the Condominium Association, or in any rules and regulations promulgated hereunder or thereunder to suspend the enjoyment rights of any owner, his heirs, licensees, invitees, successors and assigns for any period during which any assessment provided for herein remains unpaid and for any period during which any infraction of the published rules and regulations in effect; provided, however, that neither DECLARANT, Commercial Property Owner nor the Condominium Association may, for any reason, deny to any owner of a Unit the right of ingress and egress between the Unit which he owns and the closest public or private access street.

(c) The reserved right of DECLARANT or the Condominium Association to grant easements for utility purposes, as provided in Section 3.4 hereof.

3.10 NO DEDICATION TO PUBLIC USE. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Premises, to or for any public use or purpose whatsoever.

3.11 EASEMENTS TO RUN WITH THE LAND. Except as otherwise specifically limited in this Declaration, all easements and rights described herein are easements appurtenant and running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on DECLARANT, its successors and assigns, and any Owner, Occupant, purchaser, mortgagee and other person having an interest in the Premises, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed or other evidence of obligation shall not be required to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such real estate, or any portion thereof; such easements and rights being granted and reserved as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such document.

#### **ARTICLE 4** **OPERATING COVENANTS AND RESTRICTIONS**

4.1 NUISANCES. Subject to the rights of DECLARANT herein specified, no noxious or offensive activity shall be carried on in any Unit or any roof deck or garage nor shall anything be done therein (or thereon, as the case maybe), either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners and Occupants.

4.2 BUILDING FACADE AND COMMON PROPERTY AREA MAINTENANCE. To preserve the overall uniformity of the Building, the Commercial Property Owner shall be responsible for the cleaning, maintenance, snow removal, repair and replacement of the Building Facade and the Common Property Area. The cost of any such cleaning, maintenance, snow removal, repairs and replacement shall be a Shared Expense.

4.3 ALTERATIONS TO THE BUILDING FACADE. Neither the Commercial Property Owner nor the Condominium Property Owner shall make (or permit to be made) any

modification, addition, or alteration in or to the Building Facade which is part of the Commercial Property or the Condominium Property, respectively, and shall not place or permit to be placed any sign, display, lighting, window treatment, or other decorating whatsoever on any portion of the Building Facade or in any window located on the Building Facade which is (or may be) visible from the exterior of the Building without first obtaining the prior written consent of the other Owner. Nothing herein contained shall limit or restrict the rights of the Commercial Property Owner to install, maintain, use and replace exterior signage on the east, west and north elevations of the Building, or to install, maintain, use and replace telecommunications devices and equipment, as more fully provided in Article 3 hereof.

4.4 MAINTENANCE OF SHARED FACILITIES. The Commercial Property Owner shall furnish maintenance, repairs and replacement of Shared Facilities. The cost of furnishing all of such services including any reasonable management fees, administrative fees and charges for supervising and undertaking such responsibilities by the Commercial Property Owner shall be Shared Expenses hereunder.

4.5 INSURANCE.

(a) The Condominium Property Owner and the Commercial Property Owner shall each keep their respective Parcels insured against loss or damage by fire and other risk casualties and hazards as may be insured from time to time by prudent owners of first class residential and commercial buildings in an amount at least equal to the full replacement value thereof. Upon request from time to time, each Owner shall provide to the other Owner evidence of insurance coverage required under the terms of this Declaration.

(b) The Condominium Property Owner and the Commercial Property Owner shall each maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring in or upon their respective Parcels. Such insurance shall be in amounts as may be required by law and as may be carried from time to time by prudent owners of first class commercial and residential property, but in any event to afford protection for limits for not less than (i) \$1,000,000 for injury or death to a single person, (ii) \$1,000,000 for injury or death in any one occurrence, and (iii) \$1,000,000 for property damage.

(c) The Condominium Property Owner and Commercial Property Owner may jointly purchase an insurance policy or policies which name both parties and their respective mortgagees, as their interests may appear. In such event, the costs of the premiums shall be shared on such basis as may be agreed upon by the Condominium Property Owner and the Commercial Property Owner.

(d) The Condominium Property Owner and the Commercial Property Owner each hereby waives and releases any and all claims which it may have against the other or any other owner of any portion of the Premises and their respective employees and agents for damages to any portion of the Premises caused by fire or other casualty, to the extent that such damage is covered by fire or other forms of casualty insurance, and to the extent this waiver is allowed by such policy or policies. To the extent possible, all insurance policies obtained hereunder shall contain waivers of the insurer's rights to subrogation against the Commercial Property Owner, the Condominium Property Owner, and any other owner of any portion of the Premises, and their respective employees and agents.

(e) Notwithstanding anything to the contrary herein contained, the Commercial Property Owner may elect, at its option, to self insure some or all of the risks specified in this Declaration; provided that as a condition precedent to such self insurance, (i) the Commercial Property Owner shall notify the other Owner of its intention to self insure and (ii) the Commercial Property Owner shall maintain a net worth of not less than One Hundred Million Dollars (\$100,000,000.00).

4.6 COMPLIANCE WITH LAWS. The Condominium Property Owner and the Commercial Property Owner shall:

(a) comply with all laws, rules, orders, ordinances, regulations or requirements now or hereafter enacted or promulgated by the United States, the State of Illinois, the City of Chicago, or any other municipality or governmental agency now or hereafter having jurisdiction over the Building; and

(b) comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Building or any portion thereof.

If insurance premiums increase because of the nature of the use of a portion of the Building, the Owner of such portion shall be responsible for payment of the increase in the premium.

4.7 ABANDONMENT. Subject to the rights of any holder of a first mortgage on a portion of the Premises or the rights of any regulatory agency which may have an interest in the Premises, if either the Condominium Property or the Commercial Property shall be abandoned (as defined below), then the Owner of the portion of the Premises which is not abandoned shall have the right, to the extent not prohibited by law, to take possession of the abandoned property and to operate and maintain such property, including, without limitation, to lease portions of such property and make repairs to such property. Any income earned from the leasing or operation of such property may be applied to pay costs of ownership, maintenance and repair, including Charges due hereunder. For purposes hereof, the Condominium Property or the Commercial Property shall be deemed to be "abandoned" if such property is vacated by its Owner for at least ninety (90) consecutive days with the intent not to return and any one or more of the following conditions is satisfied:

(a) the property is not in good condition and repair;

(b) the heat is not being maintained at a level necessary to keep the mechanical systems in good working order;

(c) inadequate security is being furnished to such property; and

(d) the property is being defaced or vandalized.

4.8 RESTRICTIVE COVENANTS.

(a) The Condominium Property shall at all times be used for residential purposes and parking incidental thereto and for no other purpose without the prior written consent of the Commercial Property Owner. In addition, at no time shall any portion of the Condominium Property contain any ATM machines or exterior advertising for any banking institutions other than the banking facility operating at the Commercial Property.

(b) Notwithstanding anything to the contrary permitted under applicable zoning laws and ordinances, at no time shall the Commercial Property be used for establishments whose primary business is the sale of food or liquor or for a dry cleaning business conducting on site dry cleaning.

4.9 SEPARATE REAL ESTATE TAXES. It is intended that real estate taxes are to be separately taxed to each Owner of a Parcel. In the event that for any year, such taxes are not separately taxed but are taxed for the Premises as a whole, the Condominium Association shall apply for and seek a division to accomplish the separate taxation, and for such year each Owner shall pay its proportionate share thereof in the same manner as provided for the payment of assessments and subject to the same enforcement rights as provided in Article 6 hereof.

## ARTICLE 5

### DAMAGE TO BUILDINGS/STRUCTURAL SUPPORT

5.1 IN GENERAL. The Condominium Property Owner and the Commercial Property Owner shall keep their respective Parcels in good condition and repair and shall not do anything which would jeopardize the structural integrity of any portion of the Building or the safety of the occupants of the Building.

5.2 DAMAGE TO BUILDING. If any portion of the Building is damaged or falls into disrepair, then such damage or the area which is in disrepair shall be repaired and restored by the party which is responsible for the maintenance of such portion of the Building. Notwithstanding anything to the contrary herein contained, in the event of any damage or disrepair to the Building Facade and such damage or disrepair affects only the Condominium Property, then the Commercial Property Owner may at its option, require the Condominium Property Owner to repair such damage or disrepair even though the Commercial Property Owner is responsible for the maintenance of the Building Facade. If any disrepair or damage adversely affects the structural support of any other portion of the Building or substantially and adversely affects the use and enjoyment of any other portion of the Building and if at any time the Owner of the disrepaired or damaged portion of the Building (the "**Delinquent Owner**") is not proceeding diligently with the work of repair or restoration, then the other Owner (the "**Non-Delinquent Owner**") may give written notice (the "**Restoration Notice**") to the Delinquent Owner specifying with respect in which such repair or restoration is not proceeding diligently. If, upon expiration of thirty (30) days after the giving of such notice, the work of repair or restoration is not proceeding diligently, then the Non-Delinquent Owner may perform any such repair or restoration and may take any appropriate steps necessary to remove any debris on the Premises and to complete such work. The Non-Delinquent Owner shall be entitled to reimbursement from the Delinquent Owner for any amounts spent as a Charge hereunder and shall have a lien against any insurance proceeds payable under the policy of insurance covering any such damage. Without limiting the foregoing, if for any reason any portion or portions of the Condominium Property which furnish the support to the Commercial Property are destroyed, damaged or fall into disrepair and the Condominium Property Owner fails or refuses to repair or restore those portions of the Condominium Property which are necessary to support the improvements to the Commercial Property, then subject to the procedures set forth in this Section, the Commercial Property Owner shall have the right and power, at its option, to come upon the Condominium Property and repair and restore only those improvements to the Condominium Property which are necessary to support improvements to the Commercial

Property as provided herein without any obligation to restore or repair any other portions of the improvements to the Condominium Property.

5.3 OPTION TO PURCHASE. In the event that the Condominium Property is damaged, destroyed or falls into disrepair and the Condominium Property Owner fails to diligently proceed to repair or restore such damage or disrepair within ninety (90) days following the receipt of the Restoration Notice, then in addition to all other rights under this Declaration, the Commercial Property Owner shall have an option to acquire the Condominium Property at its fair market value. The exercise of this purchase option is subject to the owners of the Units approving such action in accordance with the condominium laws and ordinances in effect from time to time. For purposes hereof, "fair market value" shall be determined by an appraisal prepared by a "MAI" or similarly qualified appraiser mutually acceptable to the Commercial Property Owner and the Condominium Property Owner. In the absence of an agreement within thirty (30) following the exercise of the option by Commercial Property Owner, each party shall select their own appraiser and such appraiser shall be designated no later than thirty (30) days thereafter. Following the appointment by each Owner of an appraiser, the two appraisers shall select a third appraiser within thirty (30) days thereafter. In this case, the fair market value shall be the average of the two valuations closest to each other, with the third valuation being disregarded for this purpose.

## ARTICLE 6

### DETERMINATION OF SHARED EXPENSES AND COLLECTION OF CHARGES

6.1 COST SHARING. Prior to November 1 of each year, the Commercial Property Owner shall furnish to the Condominium Property Owner a budget for the Shared Expenses showing with reasonable detail the costs for furnishing each category of Shared Expenses (the "Budget"). The Commercial Property Owner shall have the right from time to time to upon ten (10) days prior written notice to the Condominium Property Owner to change the budget to reflect changes (either up or down) in the anticipated or actual expenses incurred. The Condominium Property Owner shall be responsible for paying eighty-five and ninety-five hundredths percent (85.95%) of all Shared Expenses and the Commercial Property Owner shall pay the balance; except that, the cost of any maintenance, repair or replacement to any Shared Facility or any part of the Shared Partition which is caused by the acts or negligence of an Owner shall be paid by such Owner, to the extent not covered by insurance.

6.2 REIMBURSEMENT OF EXPENSES. The Commercial Property Owner shall invoice the Condominium Property Owner from time to time for its share of the Shared Expenses, provided that statements therefor shall be sent no more frequently than once each calendar month. The Condominium Property Owner shall promptly pay any such invoice. If the Condominium Property Owner fails to pay any such invoice when due, then it shall become a Charge hereunder payable by the Condominium Property Owner to the Commercial Property Owner.

6.3 PAYMENT OF CHARGES. Each Owner shall be obligated to pay to the other Owner ("Payee") all Charges which may become payable hereunder. Each Charge, together with interest thereon and costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the portion of the Premises owned or administered by the Owner against which such Charge is made; provided, that, any Charge which becomes a lien against a portion of the Premises which is subject to a condominium declaration shall attach to the units created



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thereunder based on the relative percentage interests allocated to each unit. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Payee.

6.4 NON-PAYMENT OF CHARGES. Any Charge which is not paid when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the highest contract rate of interest then permitted in Illinois (or, if there is none, 18% per annum) from the due date to the date when paid and the Payee of the Charge may (i) bring an action against the Owner which is obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and/or (ii) enforce and foreclose any lien which it has or which may exist for its benefit.

6.5 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES. The lien for Charges, provided for in Section 6.3, shall be subordinate to the lien of any first mortgage at any time placed upon any portion of the Premises but shall be prior to any lien for assessments levied by any condominium association which administers any portion of the Premises. The lien for charges, provided for in Section 6.3, shall not be affected by any sale or transfer of a portion of the Premises which is subject to the lien created under this Article, except that a sale or transfer pursuant to a decree of foreclosure or in lieu of foreclosure of any first mortgage shall extinguish the lien for Charges which became payable prior to such sale or transfer. However, any such sale or transfer pursuant to a decree of foreclosure or in lieu of foreclosure shall not relieve the purchaser or transferee of such portion of the Premises from liability for, nor the portion of the Premises so sold or transferred from the lien of, any Charges thereafter coming due.

6.6 RESERVES FOR CONTINGENCIES AND REPLACEMENTS. The Commercial Property Owner shall be obligated to maintain a reasonable reserve for contingencies and replacements in each Budget. To the extent of any changes required to the Budget, the Commercial Property Owner shall serve notice of such further assessment to each Owner affected by the further assessment by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due no more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners of Parcels affected by the further assessment shall be obligated to pay the adjusted monthly amount.

6.7 FAILURE TO PREPARE ANNUAL BUDGET. The failure or delay of the Commercial Property Owner to prepare or serve the annual or adjusted estimate shall not constitute a waiver or release in any manner of any Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the Owner shall be obligated to continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until notice of the amount of the revised monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.8 BOOKS AND RECORDS. The Commercial Property Owner shall keep full and correct books of account in chronological order of its receipts and expenditures. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of any Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days' notice to



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the Commercial Property Owner and payment of a reasonable fee, any Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due to and owing from such Owner.

6.9 STATUS OF COLLECTED FUNDS. All funds collected hereunder shall be held and expended for the purposes designated herein, and shall be deemed to be held for the benefit, use and account of the Owners who paid the same.

## ARTICLE 7

### GENERAL PROVISIONS

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7.1 AMENDMENTS. The covenants and restrictions of this Declaration shall run with and bind the Premises subject to this Declaration, and shall inure to the benefit of and be enforceable by the Condominium Association, DECLARANT and each Owner, their respective legal representatives, heirs, successors and assigns. The covenants and restrictions of this Declaration may be amended by an instrument signed by the Owners provided, however, that any provision relating to the rights and obligations of DECLARANT may not be amended without the express written consent of DECLARANT. Any such amendment shall not become effective until recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

7.2 DECLARANT RIGHTS. DECLARANT shall have the right to specifically assign the rights, privileges, powers, options and benefits reserved to it under this Declaration, and upon such specific assignment, the assignee shall be entitled to said rights, privileges, powers, options and benefits as fully and to the same extent and with the same effect as if such assignee were herein by name specifically granted such rights, privileges, powers, options and benefits, and DECLARANT shall thereafter be released from any liability or responsibility hereunder.

7.3 NOTICES. Any notice required or permitted to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by certified mail, return receipt requested, postage prepaid, to the last known address of the person who appears as Owner at the time of such mailing. Any notice required or permitted to be sent to the Condominium Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed in the same manner as notice to an Owner, addressed to the Condominium Association, c/o its legal registered agent or at such other place as may be designated by the Condominium Association pursuant to notice. Notice shall be deemed given when deposited in the United States mails.

7.4 NONWAIVER OF COVENANTS. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce same, irrespective of the number of violations or breaches which may occur.

7.5 INDEMNITY. The directors and any other officers of the DECLARANT, and the Commercial Property Owner and their managers, members and agents and their respective successors and assigns shall not be liable to the Owners for any mistake of judgment or acts or omissions made in good faith as such directors, officers, managers and members. Each agreement made by such directors or officers or by the managing agent on behalf of the Owners or the Condominium Association shall be executed by such directors or officers, as agents for the Owners or Condominium Association. The Condominium Property Owners shall indemnify

and hold harmless the Commercial Property Owner, and each of the parties specified herein, against all contractual liability to others arising out of contracts made pursuant to the terms of this Declaration, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of the Condominium Property Owner arising out of this paragraph shall be computed in accordance with Section 6.1.

7.6 ENFORCEMENT. Enforcement by the Condominium Association, DECLARANT or any Owner of the easements, covenants and restrictions in this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any easement, covenant or restriction, to restrain violation and/or to recover damages, and against the land to enforce any lien created by these covenants. The violation of any restriction, condition or regulation adopted by the Commercial Property Owner, or the breach of any of the covenants and restrictions herein contained, shall give the Commercial Property Owner the right, in addition to all other rights herein set forth, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any violation or breach. An Owner determined to have violated this Declaration shall reimburse the Condominium Association, DECLARANT and Commercial Property Owner for their costs of enforcement including, but not limited to, reasonable attorneys' fees and expenses.

7.7 WAIVER OF DAMAGES. DECLARANT shall not be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted or delegated by or pursuant to this Declaration to DECLARANT (or its representatives or designees) in its capacity as developer, contractor, Owner, manager or seller of the Premises, whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board or the Condominium Association, or by any person or entity claiming through any of them, (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused or (c) shall arise *ex contractu* or *ex delictu* (except in case of willful malfeasance).

7.8 TITLE IN TRUST. In the event title to any Parcel is conveyed to a land title holding trustee pursuant to a trust agreement which provides that all powers of management, operation and control of such Parcel remain vested in the beneficiary or beneficiaries of such trust, then the beneficiary or beneficiaries of such trust shall be deemed to be the Owner of such Parcel for purposes of this Declaration and any rules and regulations promulgated by the Commercial Property Owner, and shall be responsible for payment of the assessments provided for in this Declaration, and such land title holding trustee shall not be personally liable for payment of any such assessment. The amount of any assessment shall continue to be a charge or lien upon the Parcel and the personal obligation of the beneficiary or beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Parcel.

7.9 SEVERABILITY; PERPETUITIES. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision hereof. If any provision hereof would otherwise violate the rule against perpetuities or any other law imposing time limitations, then such provision shall remain in effect no longer than twenty-one (21) years after the death of the last survivor of the now living descendants of the United States Senators from the State of Illinois serving at the time of the recordation hereof.

7.10 ASSIGNMENT. DECLARANT shall have the right to assign any or all of its rights and privileges hereunder by deed or other instrument upon such terms and conditions or with such limitations as it may deem fit.

7.11 INTERPRETATION. The article and section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

7.12 RELEASE FROM LIABILITY UPON CONVEYANCE. Upon any conveyance of all or any portion of the Commercial Property, DECLARANT shall be released from any liability or obligation hereunder and each Owner shall look to such successor in interest.

7.13 NON-RECOURSE. It is expressly understood and agreed by every person, firm, corporation or entity hereafter claiming any interest under this Declaration that DECLARANT has joined in the execution of this Declaration for the purpose of subjecting the title holding interest and the Premises to the terms of this Declaration; that any and all obligations, duties, covenants and agreements of every nature herein set forth by DECLARANT as aforesaid to be kept or performed are intended to be kept, performed and discharged by the Owners and not by DECLARANT personally. In the event of conflict between the terms of this Section and the remainder of this Declaration on any questions of apparent liability or obligation resting upon DECLARANT, the exculpatory provisions hereof shall be controlling.

IN WITNESS WHEREOF, First American Bank has caused its name to be signed to these presents as of the date first set forth above.

FIRST AMERICAN BANK, an Illinois corporation

By: [Signature]  
An Authorized Officer

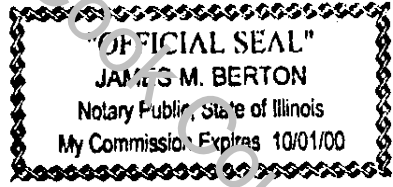
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STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas E. Wells, IV, as Chairman of First American Bank (the "Corporation"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chairman, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of the Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of June, 1999.

  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 1 TO 7, BOTH INCLUSIVE, IN BLOCK 5 IN THE SUBDIVISION OF BLOCKS 5, 6 AND THE WEST ½ OF BLOCK 7 IN THE SUBDIVISION OF BLOCK 44 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS:

1345 W. DIVERSEY  
CHICAGO, ILLINOIS

PERMANENT INDEX NO.:

14-29-303-002

**99701986**

This document prepared by and after recording mail to:

Steven H. Blumenthal, Esq.  
Much Shelist Freed Denenberg Ament & Rubenstein, P.C.  
200 North LaSalle Street - Suite 2100  
Chicago, IL 60601

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## EXHIBIT B

The Commercial Property

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THAT PART OF LOTS 1 THROUGH 5, BOTH INCLUSIVE, AND THE EAST 0.41 FEET OF LOT 6, TAKEN AS A TRACT IN BLOCK 5 IN THE SUBDIVISION OF BLOCKS 5, 6 AND THE WEST HALF OF BLOCK 7 IN THE SUBDIVISION OF BLOCK 44 IN SHEFFIELD'S ADDITION TO CHICAGO, IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE OF +30.15 CITY OF CHICAGO DATUM AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT, 43.18 FEET TO A POINT IN THE CENTER OF A PARTY WALL EXTENDED EASTWARDLY TO THE EAST LINE OF SAID TRACT; THENCE WEST ALONG SAID CENTER OF PARTY WALL AND ITS EXTENSION EASTWARDLY, 21.58 FEET; THENCE SOUTH ALONG SAID CENTER OF PARTY WALL, 3.80 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 7.74 FEET; THENCE NORTH ALONG SAID CENTER OF PARTY WALL, 3.80 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 91.30 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH, ALONG SAID WEST LINE 43.16 FEET TO A POINT IN THE NORTH LINE OF SAID TRACT; THENCE EAST ALONG SAID NORTH LINE, 120.68 FEET, TO THE POINT OF BEGINNING. ALSO THAT PART OF SAID TRACT, LYING BELOW A HORIZONTAL PLANE OF +30.15 CITY OF CHICAGO DATUM AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH ALONG THE EAST LINE OF SAID TRACT, 27.10 FEET TO A POINT IN THE CENTER OF A PARTY WALL, SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY INTENDED TO BE DESCRIBED; THENCE EAST ALONG SAID CENTER OF PARTY WALL, 8.58 FEET; THENCE NORTH ALONG SAID CENTER OF PARTY WALL, 16.35 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 8.58 FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID TRACT, 16.35 FEET TO THE POINT OF BEGINNING, ALSO LOT 6 ( EXCEPT THE EAST 0.41 FEET THEREOF ) AND ALL OF LOT 7 IN THE AFORESAID SUBDIVISION, ALL IN COOK COUNTY, ILLINOIS.

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## EXHIBIT C

The Condominium Property

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THAT PART OF LOTS 1 THROUGH 5, BOTH INCLUSIVE, AND THE EAST 0.41 FEET OF LOT 6 TAKEN AS A TRACT, IN BLOCK 5 IN THE SUBDIVISION OF BLOCKS 5, 6 AND THE WEST HALF OF BLOCK 7 IN THE SUBDIVISION OF BLOCK 44 IN SHEFFIELD'S ADDITION TO CHICAGO, IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART OF THE AFORESAID TRACT LYING BELOW A HORIZONTAL PLANE OF +30.15 CITY OF CHICAGO DATUM AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT, 43.18 FEET TO A POINT IN THE CENTER OF A PARTY WALL EXTENDED EASTWARDLY TO THE EAST LINE OF SAID TRACT; THENCE WEST ALONG SAID CENTER OF PARTY WALL AND ITS EXTENSION EASTWARDLY, 21.58 FEET; THENCE SOUTH ALONG SAID CENTER OF PARTY WALL, 3.80 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 7.74 FEET; THENCE NORTH ALONG SAID CENTER OF PARTY WALL, 3.80 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 91.30 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH, 43.16 FEET TO A POINT IN THE NORTH LINE OF SAID TRACT; THENCE EAST ALONG SAID NORTH LINE, 120.68 FEET TO THE POINT OF BEGINNING, ALSO EXCEPTING THAT PART OF SAID TRACT, LYING BELOW A HORIZONTAL PLANE OF +30.15 FEET CITY OF CHICAGO DATUM AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH ALONG THE WEST LINE OF SAID TRACT, 27.10 FEET TO A POINT IN THE CENTER OF A PARTY WALL, SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY INTENDED TO BE DESCRIBED; THENCE EAST ALONG SAID CENTER OF PARTY WALL, 8.58 FEET; THENCE NORTH ALONG SAID CENTER OF PARTY WALL, 16.35 FEET; THENCE WEST ALONG SAID CENTER OF PARTY WALL, 8.58 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH ALONG SAID WEST LINE, 16.35 FEET, TO THE POINT OF BEGINNING), ALL IN COOK COUNTY, ILLINOIS.

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