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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

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DATED AS OF FEBRUARY 1, 1999

BY

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
AS TRUSTEE UNDER TRUST AGREEMENT  
DATED OCTOBER 10, 1996  
AND KNOWN AS TRUST NO. 122176-00

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This instrument was prepared by:  
Jacob Reiss  
Law Offices of Jacob Reiss  
6767 N. Milwaukee Ave., Suite 202  
Niles, Illinois 60714  
(847) 647-0181

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CONDITIONS, RESTRICTIONS AND EASEMENTS**

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Exhibits

**LIST OF EXHIBITS TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

<b>Exhibit Letter</b>	<b>Description</b>
A	Total Parcel
B	Depiction of relative locations of Condominium Property and Commercial Property as described on Survey
C	Legal Description of Parcel 1
D	Legal Description of Parcel 2

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**THIS DECLARATION** is made and entered into as of the 1st day of February, 1999, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated October 10, 1996, and known as Trust Number 122176-00 ("Declarant").

**RECITALS:**

A. The terms used in the Recitals, if not otherwise defined, shall have the meanings set forth in Article II hereof.

B. Declarant is the record legal title holder of the Total Parcel situated in Chicago, Cook County, Illinois, legally described on Exhibit A attached hereto. The Total Parcel is presently improved with a four (4) story mixed-use building ("Building") containing a parking garage with the approximate dimensions of 65 x 116 feet, floors two (2), three (3) and four (4) (the parking garage and floors two (2), three (3) and four (4) hereinafter referred to as the "Condominium Property") and floor one (1) occupied as commercial space ("Commercial Property").

C. Immediately after the recordation of this Declaration, Declarant (or its beneficiary) intends (a) to cause the Commercial Property to be conveyed to American National Bank and Trust Company of Chicago, not personally but solely as Trustee under a Trust Agreement dated February 1, 1999, and known as Trust Number 124857-02 (the "Commercial Property Trustee"), and (b) thereafter to cause the Condominium Property to be submitted to the provisions of the Condominium Property Act of the State of Illinois (the "Act") pursuant to the Condominium Declaration. Said conveyance and submission of the Condominium Property to the Act will be subject to the terms and provisions of this Declaration.

D. The survey attached as Exhibit B hereto and made a part hereof illustrates the Total Parcel and the relative locations of the Commercial Property and Condominium Property and easements .

E. From and after the conveyance of the Commercial Property to the Commercial Property Trustee, neither the Condominium Property nor the Commercial Property will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility service or other facilities and components necessary to the efficient operation and intended use of the Condominium Property and the Commercial Property.

F. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Condominium Property which will be binding upon each present and future Owner of the Condominium Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein including leasehold interests, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Condominium Property, or of any portion thereof or interest or estate or Unit therein, to the extent provided herein.

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

**ARTICLE I**

**INCORPORATION OF RECITALS**

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

**ARTICLE II**

**DEFINITIONS**

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

2.2 "Architect" shall have the meaning set forth in Article XVII hereof.

2.3 "Commercial Improvements" means all improvements constructed now or hereafter within and upon Parcel 1, as legally described on Exhibit C attached hereto and by this reference made a part hereof.

2.4 "Commercial Property" shall mean Parcel 1 and the Commercial Improvements.

2.5 "Common Elements" means all portions of the Condominium Property submitted from time to time to a Condominium Declaration except the Units.

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

2.7 Reserved.

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

2.9 "Condominium Improvements" means all improvements constructed within and upon Parcel 2, as legally described on Exhibit D attached hereto and by this reference made a part hereof.

2.10 "Condominium Property" shall mean Parcel 2 and the Condominium Improvements which shall be submitted to the Act.

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

2.12 "Declarant" means American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated October 10, 1976 and known as Trust Number 122176-00, its successors and assigns.

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

2.14 "Default Rate" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 13.5 hereof.

2.15 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this

Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.

2.16 "Depositary" means the person or entity from time to time acting pursuant to Article XVIII of this Declaration.

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

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

2.19 "Facilities" means all components, and any replacements or substitutions therefor, of the mechanical, plumbing, electrical, heating, air conditioning, alarm, television, telephone and other utility systems forming a part of the improvements and designed or utilized to furnish utility or other services to any portion of the Improvements, including without limitation: annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment, fans, fixtures, generators, hangers, heat tracers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

2.20 "Improvements" means the Condominium Improvements, and Commercial Improvements.

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

2.22 "Non-Condominium Property" means any portion of the Total Property, from time to time, not submitted to the Act.

2.23 "Owner" means either the Owner of the Condominium Property or the Owner of the Commercial Property, as the context requires. "Owners" means the Owner of the Condominium Property and the Owner of the Commercial Property, as the context may require.

2.24 "Owner of the Commercial Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the



Commercial Property. If at any time the Commercial Property is submitted to the provisions of the Act, the Owner of the Commercial Property shall mean all of the fee simple Unit Owners therein collectively and not individually.

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

2.26 Reserved

2.27 Reserved

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

2.29 "Secured Property Lenders" mean the holder of any mortgage or trust deed in the nature of a mortgage (as the same may be amended and/or replaced from time to time) on any portion of the Total Property, excluding, however, any mortgage or trust deed in the nature of a mortgage securing a loan to any Unit purchaser.

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

2.31 "Total Property" means the Condominium Property and the Commercial Property.

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

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

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

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

## ARTICLE III

### RESERVED



**ARTICLE IV****EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY**

4.1 The following perpetual (except as otherwise provided) easements in, to, under, over, upon, through and about portions of the Commercial Property, as the case may be, in favor of the Condominium Property are hereby Granted:

(A) Non-exclusive easements as may be described on Exhibit B attached hereto.

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

(C) A non-exclusive easement for the use for their intended purposes of all Facilities located in the Commercial Property and connected to Facilities located in the Condominium Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Condominium Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Condominium Property.

(D) An exclusive easement maintaining encroachments to the extent that, by reason of the original construction or any reconstruction or replacement authorized by the terms of this Declaration of the improvements or the subsequent settlement or shifting of any part of the Improvements, any part of the Condominium Improvements encroaches or shall hereafter encroach upon any part of the Commercial Property. No such encroachment shall be placed or enlarged deliberately. Such easement permitting encroachments shall exist only as long as the encroaching portion of the Improvements continues to exist; provided, however, that in no event shall an easement for any encroachment be created in favor of the Condominium Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of or materially lessens the available light and air of the Commercial Property by the respective Owners thereof.

(E) A non-exclusive easement for ingress and egress (and, where reasonably necessary, use) by persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Condominium Property as required or permitted pursuant to this Declaration, or to the

extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article VIII hereof.

(F) A non-exclusive easement for ingress and egress and for storage as permitted by law and specifically for bicycle storage purposes, if any, of the utility room located on the first floor of the Building identified on Exhibit B attached hereto.

(G) Reserved.

(H) A non-exclusive easement for the use of the stairwells, if any, which connect the Condominium Property with the first floor and which are identified on Exhibit B attached hereto for access to and from public and/or private sidewalks, roadways or alleys.

(I) Reserved.

(J) Reserved.

(K) A non-exclusive easement for the use of the applicable mailboxes located on the first floor of the Building or of such other areas identified on Exhibit B attached hereto to which they may be relocated.

(L) A non-exclusive easement for use of an iron fence and/or an iron gate located on the first floor of the Building.

(M) A non-exclusive easement for the use of the security intercom service located on the first floor of the Building.

4.2 Each Easement created under this Article IV which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property, shall be subject to such reasonable limitations as the Owner of the Commercial Property may, from time to time after consultation with the Owner of the Condominium Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Commercial Property and in order to assure the reasonable security of the Commercial Property.

4.3 Easements provided for, declared or created under this Article IV shall be binding upon the Commercial Property and the Owner of the Commercial Property and run in favor of and inure to the benefit of and be appurtenant to the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

4.4 The Owners of the Condominium Property shall have the right along with the Owners of the Commercial Property to place, maintain and replace one dumpster in the loading Zone, if any, which may be shown on Exhibit B attached hereto and shall be prohibited from any obstruction of any part of the Commercial Property or any driveways, sidewalks or walkways or from interfering with the Owner's of the Commercial Property use of the Easement which is identified in Paragraph 5.1(I).

## ARTICLE V

### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

5.1 The following perpetual easements in, to, under, over, upon, through and about portions of the Condominium Property in favor of the Commercial Property are hereby Granted:

(A) Non-exclusive easements as may be described on Exhibit B attached hereto.

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

(C) A non-exclusive easement for the use for their intended purposes of all Facilities located in the Condominium Property and connected to Facilities located in the Commercial Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property.

(D) An exclusive easement maintaining encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement authorized by the terms of this Declaration or the subsequent settlement or shifting of any part of the Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Condominium Property. No such encroachment shall be placed or enlarged deliberately. Such easement permitting encroachments shall exist only as long as the encroaching portion of the Improvements continues to exist; provided, however, that in no event shall an easement for any encroachment be created in favor of the Commercial Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of or materially lessens

the available light and air of the Condominium Property by the respective Owners thereof.

(E) A non-exclusive easement for pedestrian and vehicular ingress and egress in an Emergency Situation to and from, over, on, across and through the Condominium Property.

(F) A non-exclusive easement for ingress and egress (and, where reasonably necessary, use) for persons, material and equipment over, on, across and through the Condominium Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 5.1 or to provide structural support required by Article VIII hereof.

(G) A non-exclusive easement for the use and maintenance of future Facilities connecting Facilities or areas of the Commercial Property to any antennae or other communications devices or equipment on the roofs of the Condominium Property, which future Facilities may extend through space for such future use.

(H) A non-exclusive easement for the use of any hallways, stairways, walkways or driveways located within or adjacent to the Building, to the extent reasonably necessary for access to and from the public roadways.

(I) A non-exclusive easement for ingress, egress and access to, and the use of, any loading zone, service areas and delivery entrances located in, on, or about the first floor of the Building and specifically for the use for ingress, egress and refuse and utilities and loading as may be shown on Exhibit B attached hereto and shall be allowed to place, maintain and replace one dumpster, but shall be prohibited from any obstruction of any part of the Condominium Property or any driveways, sidewalks or roadways.

(J) A non-exclusive easement for pedestrian and vehicular ingress and egress from and to public roadways over, on, across and through the driveways, sidewalks, ramps, curbs and roadways contained in the Condominium Property as may be necessary for the use of the Commercial Improvements.

5.2 Each Easement created under this Article V which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Condominium Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Condominium Property may, from time to time after consultation with the Owner of the Commercial Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Condominium

Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that Section 5.1(E) shall not be subject to any such limitation.

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

5.4 With regard to any portion of the Total Property over which easements have been granted pursuant to Articles IV and V hereof, the Owner of that portion of the Total Property burdened by such easement shall have the right to relocate any such easements (other than the easements described in Paragraphs 4.1(B), 4.1(D), 5.1(B) and 5.1(D) in the event alternative means can be substituted to insure the continuation of the benefit granted so long as it does not interfere with the other Owners of Total Property's use and enjoyment.

5.5 With regard to any portion of the Total Property over which easements have been granted pursuant to Articles IV and V hereof for pedestrian ingress and egress in an Emergency Situation, such easements shall not be deemed to include any portion of a dwelling unit or a commercial space.

## ARTICLE VI

RESERVED

## ARTICLE VII

RESERVED

## ARTICLE VIII

### STRUCTURAL SUPPORT

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

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



(A) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Architect shall determine the apportionment of the cost for all Owners and in such proportions determined by the Architect. The Owners shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article XXIII would not require such approval) the Owner or Owners of the portion of the Total Property affected thereby, the Architect and Secured Party Lenders with respect to any portions of the Total Property affected thereby and, subject to the provisions of Article XII hereof, shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support.

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

8.3 The responsible Owner or Owners shall commence, within thirty (30) days after notice from any other Owner, or in the event the matter is submitted to the Architect, within thirty (30) days after the Architect's determination, the construction of such substitute or additional support within a reasonable time under the circumstances free of all mechanics' lien claims and having commenced such construction shall proceed diligently to cause the completion of such construction.

8.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 8.2 shall be determined as responsible for such construction, any Owner shall, upon not less than thirty (30) days' advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all actual and reasonable costs and expenses incurred as a result of any Owner's provision of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of the other portion of the Total Property during any period of reconstruction.

## ARTICLE IX

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

9.1 The Owner of the Condominium Property and the Owner of the Commercial Property:

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

(B) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's portion of the Total Property if noncompliance by it with respect to its portion of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners. Notwithstanding the foregoing, any use specifically allowed by the zoning laws which is not prohibited by this Agreement shall be deemed as an exception to this Paragraph 9.1(B)(i) or (ii) render any other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring any other Owner's portion of the Total Property, provided, further, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any other Owner's portion of the Total Property, such other Owner shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and if upon expiration of thirty (30) 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, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

9.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Owner's portion of the Total Property, or on its portion of the Total Property, arising by reason of its act or any work or materials which it has ordered, but only where such lien includes the other Owner's portion of the Total Property. However, if a lien is recorded against one Owner's portion of the Total Property but adversely affects any easement or service to be performed or furnished to the other Owner, then such other Owner shall have the right to remove such lien in accordance herewith. Notice of the filing of any such lien shall be served upon the Secured Property Lenders. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien plus interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Secured Property Lenders; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner, and to the Secured Property Lenders if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (b) shall deliver to the Creditor Owner or, if loan documents so provide, to the Secured Property Lenders, either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Secured Property Lenders, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or to establish a title indemnity with a title company with sufficient funds, if at all, as required by the title company to endorse over such lien claim or (ii) other security reasonably acceptable to the Creditor Owner and the Secured Property Lenders, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the document securing the Secured Property Lenders, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within five (5) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at

any time to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

9.3 Each Owner (hereinafter in this Section 9.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 9.3, the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee, Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

9.4 Without limiting the provisions of Section 9.1(A), neither the Owner of the Condominium Property nor the Owner of the Commercial Property shall make any Alterations (as that term is hereinbelow defined in Section 23.1) or allow any use of their respective portions of the Total Property to take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portions thereof. The Condominium Property and Commercial Property shall continue to be combined and treated as one zoning lot for the purpose of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Total Property without the consent of the other Owners, which consent shall not be unreasonably withheld, except that no Owner shall be required to consent to any change in the Chicago Zoning Ordinance as applicable to any portions of the Total Property which (i) increases density, (ii) increases maximum height in any portion of the Total Property, or (iii) changes the character or permitted use of any portion of the Total Property. However, Owner of the Commercial Property may seek a special use variance for any special uses provided by the zoning provisions unless specifically prohibited herein.

## ARTICLE X

### REAL ESTATE TAXES

10.1 The Owners shall make good faith efforts and cooperate with each other such that the Condominium Property and the Commercial Property shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor of Cook County, Illinois ("Assessor"). From and after submission of the Condominium Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. The Owner of the Commercial Property shall pay the real estate taxes levied upon the Commercial Property, and the Owner of the Condominium Property shall pay the real estate taxes levied upon the Condominium Property.

10.2 Until the Commercial Property and Condominium Property are separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes and special assessments. The assessed valuation respecting the "land" and "improvements" (as hereinafter defined) and the taxes computed thereon shall be allocated between the Owners and paid by the respective Owners as set forth in this Section 10.2. Allocations of assessments set forth herein are based upon information contained in the official real estate tax record cards ("cards") of the Assessor, which cards show assessed valuations of land and improvements. Since the terminology used in the Assessor's cards may vary from the terms used in this Declaration, for purposes of this Section 10.2 the following definitions shall apply: "land" shall mean Total Parcel; "Improvements" shall mean the Building; "Condominium Improvements" shall mean the same as Condominium Improvements; and "Non-Condominium Improvements" shall mean the same as Commercial Improvements.

(A) **Allocation of Assessed Valuation of Land.** Unless otherwise agreed to by the Owners, the assessed valuation of the land shall be allocated as follows:

(1) Allocation of assessed valuation of land to Condominium Property equals:

$$\frac{\text{Value of Condominium Improvements}}{\text{Value of Improvements}} \times \text{Assessed valuation of land}$$

(2) Allocation of assessed valuation of land to Non-Condominium Property equals:

Assessed valuation of land minus assessed valuation of land allocated to Condominium Property (under Section 10.2(a)(1)).

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

(1) Allocation of assessed valuation of improvements to Condominium Property equals:

$$\frac{\text{Value of Condominium Improvements}}{\text{Value of improvements}} \times \text{Assessed valuation of Improvements}$$

(2) Allocation of assessed valuation of improvements to Non-Condominium Property equals:

Assessed valuation of improvements minus assessed valuation of improvements allocated to Condominium Property (under Section 10.2(A)(1)).

(C) **Allocation and Payment of Taxes.** Each Owner of the Total Property shall pay their proportionate share of the bills for the Total Property prior to their due date. The Owner of the Condominium Property shall pay for its share of the total real estate taxes levied in the combined tax bill or bills for the Total Property, which share shall be calculated as follows:

Condominium Property share equals:

$$\frac{\text{Total assessed valuations allocated to Condominium Property under Sections 10.2(A) and 10.2(B) hereof} \times \text{Total Assessed valuation of land and improvements}}{\text{Total real estate taxes}}$$

10.3 If any Owner (the "Defaulting Owner") shall fail to pay any tax or other charge or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article X, then any other Owner (the "Creditor Owner") may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments and with interest at the default rate from the date such payment was due until the date paid, which default rate shall equal twenty-five percent (25%) of the amount due from the Defaulting Owner thereon, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article XIII hereof.

10.4 Any Owner may, if it shall so desire, endeavor at any time or times, to obtain a lowering of the assessed valuation upon the Property for the purpose of reducing taxes thereon ("Protesting Owner"). In the event such protest shall be made by a Protesting Owner

prior to the time that the Condominium Property and Commercial Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owners at least ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event any other Owners fail to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose and any such tax relief shall be the property of Protesting Owner. Notwithstanding the above, if any other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes, the Owners who have protested shall apportion the tax refund in accordance with their respective portions of the real estate taxes. Nothing in this Paragraph shall affect any Owner's or each Owner's right to protest taxes or special assessments to such extent as it affects only such Owner's portion of the Total Property.

10.5 All or any portion of this Article X may be amended if such amendment is in writing and consented to by Owners of the Total Property and with a copy to the Secured Property Lenders .

## ARTICLE XI

### INSURANCE

11.1 The Owner of the Condominium Property and the Owner of the Commercial Property shall procure and maintain the following insurance:

(A) The Owner of the Commercial Property shall keep its portion of the Improvements insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. The Owner of the Condominium Property or the Association shall keep its portion of the Improvements insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than one hundred percent (100%). Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(B) The Owner of the Condominium Property and the Owner of the Commercial Property shall maintain Comprehensive General Liability Insurance with Broad Form Extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class residential buildings in the City of Chicago, but in all events for limits of not less than ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) combined



single limit for personal and bodily injury or property damage with at least additional THREE MILLION DOLLARS (\$3,000,000) umbrella coverage and containing appropriate coverage during any period of construction.

11.2 Unless all Owners otherwise agree in writing, but in any event subject to any required approval of the Secured Property Lenders, if applicable, with respect to each of the insurance policies required in Section 11.1 hereof, the interest of the Owner of the Condominium Property and the Owner of the Commercial Property shall be insured by the same insurance companies and through the same insurance broker as that of the Owner of the Commercial Property. Such policies may be issued in combination with respect to each Owner, but shall be separate policies for each Owner covering one or several items. Insurance policies required herein shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than B+/XIV according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

11.3 Each policy described in Section 11.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall, with respect only to the policy described in Section 11.1(B), insure as additional insureds the Owner of the Condominium Property and the Owner of the Commercial Property and their respective beneficiaries and its agents thereunder and the Secured Property Lenders; provided, however, that so long as any portion of the Total Property shall be subject to the Act, the Association and not the individual Unit Owners or the Owner of that portion of the Total Property so submitted shall be insured as an additional insured; (iii) shall provide, except for liability insurance described in Section 11.1(B), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder including the Secured Property Lenders, unless such cancellation thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient and (v) shall, if available, provide except for the liability insurance required under Section 11.1(B), that all amounts payable thereunder shall be paid to the Depository in accordance with Articles XII and XVIII hereof. Nothing contained in this Section 11.2 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of standard mortgage endorsement for Secured Property Lenders; provided, however, that the mortgagee under any mortgage upon any part of the Total Property receiving any proceeds of any insurance policy

described in Section 11.1(A) shall deposit the insurance proceeds with the Depository in accordance with Articles XII and XVIII to the extent that the owner of the mortgaged property receiving such proceeds would be required to do so, except that such obligation for such deposit by a mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then uncured default under the mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the mortgagee, will be at least equal to the cost, as estimated by the mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

11.4 Limits of liability or types of insurance specified in this Article XI or carried by the Owners shall be reasonable and prudent for an Owner of a first class residential and/or commercial facility, as applicable, and shall be jointly reviewed by the Owners from time to time to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Deductible amounts for insurance required under Sections 11.1(A) and 11.1(B) shall be in such amounts as are customary or prevalent for an Owner of a first class residential and/or commercial facility, as applicable. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable and subject to the right of Secured Property Lenders to approve any such changes, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance consultant to perform such review periodically on their behalf and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

11.5 Copies of all original insurance policies and all renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner (or, if appropriate, to the Condominium Association) and to the Secured Property Lenders, at least twenty (20) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Should an Owner fail to provide and maintain any policy of insurance required under this Article XI or pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment of the Creditor Owner to the date of reimbursement to the Creditor Owner.



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

## ARTICLE XII

### MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

12.1 Reserved.

12.2 Except as expressly provided hereinafter in this Article XII in the event of fire or other casualty, the Owner of the Condominium Property shall keep the Condominium Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Condominium Property shall also maintain and repair the parking garage as well as the sidewalks located along Aberdeen Street. The Owner of the Condominium Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Further, the Owner of the Condominium Property shall maintain the exterior of the Condominium Property using its present scheme or a similar scheme for all painted surfaces, shall keep the brick properly tuckpointed, cleaned and maintained and shall not paint the exterior brick. The Owner of the Condominium Property agrees further to reasonably maintain the ceiling to the Commercial Property and to keep such area free from leaks and to prevent any water infiltration to the Commercial Property.

12.3 Except as expressly provided hereinafter in this Article XII in the event of fire or other casualty, the Owner of the Commercial Property shall keep the Commercial Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property shall also maintain and repair the sidewalks located in front of the

Building along Kinzie Street. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Further, the Owner of the Commercial Property shall maintain the exterior of the Commercial Property using its present scheme or a similar scheme for all painted surfaces, shall keep the brick properly tuckpointed, cleaned and maintained and shall not paint the exterior brick.

12.4 The Owners of the Condominium Property and the Owner of the Commercial Property shall share equally in the repair of the utility room located on the first floor of the Building if such room is damaged by fire or other casualty. In addition, if any or all Facilities are damaged or destroyed and the repair or the replacement benefits more than one Owner (even though the Facilities may be located in only a portion of the Total Property) and if the cost of such repair or replacement is not entirely covered by insurance proceeds, then the apportionment of the cost for the repair or replacement shall be determined in the same manner as specified in Paragraph 8.2(A) hereinabove.

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

12.6 If the Improvements are damaged by fire or other casualty and if the provisions of Section 12.5 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of Section 12.5, then the

repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners which are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Secured Property Lenders, if required. In the event such Owners, and the Secured Property Lenders, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article XIV hereof. The plans and specifications for such repair and reconstruction shall provide for the improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Secured Property Lenders, if required.

12.7 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 12.6 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owner's Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

12.8 In any instance of repair or restoration pursuant to Sections 12.5 or 12.6 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing 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 Depositary the amount of such excess cost and expense attributable to each Owner pursuant to this Article XII. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depositary security for payment of its share reasonably acceptable to the other Owners, the Depositary and the Secured Property Lenders. 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 Depositary in the face amount of the share owned or a loan commitment, reasonably satisfactory to the other Owners and the Secured Property Lenders, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depositary to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of

the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 12.8, or fails to deliver the security provided for herein within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

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

12.10 If the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Secured Property Lenders, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner pursuant to the terms and the amounts stated in each Owner's policy, subject to the rights of the Secured Party Lenders. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 12.5, 12.6, 12.7, 12.8 and 12.9 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such a manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of applicable ordinances of the City of Chicago caused by the other party's failure to rebuild. In the event all Owners of the Total Property agree not to rebuild where the Improvements are totally destroyed, the land underlying the Improvements shall be deemed to be owned by the Owners of the Condominium Property (as to an undivided per cent ( %) interest) and the Owners of the Commercial Property (as to an undivided per cent ( %) interest) as Tenants in Common. Any Owner shall have the right to sue for partition (but for purposes of such partition the land shall be deemed not susceptible of division).



12.11 For purposes of this Article XII, 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.

12.12 The Building contains one (1) water meter and one (1) City of Chicago account(s) for the consumption and usage of water and sewage. The bill shall be placed in the name of the Owners of the Condominium Property and the Owners of the Condominium Property shall present a copy of the bill to the Owner of the Commercial Property who shall immediately (not more than ten (10) days after receipt of such copy) tender a check payable to the Department of Water, City of Chicago for five per cent (5%) of the amount of the bill. The Owners of the Condominium Property shall be responsible for payment of the balance of the bill and such bill shall be paid timely. The applicable percentage of responsibility for payment of the bill may be adjusted based upon actual usage. Either Owner or Owners shall have the option of having its Property separately metered at its own expense, in which event this provision shall not be applicable to bills received thereafter.

## ARTICLE XIII

### LIENS, RIGHTS AND REMEDIES

13.1 If, at any time, any Owner fails within thirty (30) days after notice or demand to pay any sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (1) a lien against the portion of the Total Property owned by the Defaulting Owner, in the amount due from the Defaulting Owner to the Creditor Owner plus all interest due the Creditor Owner with respect to such amounts, and (b) for a default under Articles XII or XVI, a lien against any condemnation award or insurance proceeds payable to Defaulting Owner for loss or damage to such portion of the Total Property or otherwise under insurance policies carried pursuant to Article XI hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article XIII. In the event any such lien shall exist on any portion of the Total Property subject to a Condominium Declaration pursuant to the Act, a proportionate share of such lien shall attach to each Unit equal to the aggregate amount due from the Owner of such portion of the Total Property multiplied by the percentage of ownership in the Common Elements allocable to such Unit; each such Unit Owner shall have liability to the Creditor Owner of the proportionate share of such liability attributable to such Unit. All liens under this Section 13.1 shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in law or 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 thereof shall have been paid in full. The liens provided for in this Section 13.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on the portion of the Total Property owned by the

Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against such portion of the Total Property at the time of the recording of the notice of lien.

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

- (A) the structural integrity and safety of the Improvements;
- (B) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the Improvements;
- (C) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Total Property or any part thereof; and
- (D) the architectural unity and aesthetic appearance of the restored Improvements as a first-class mixed-use property.

The lien created by this Section 13.2 shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on the Condominium Property other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against the Condominium Property. Such lien shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section 13.2 of this Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid the other Owners, or the Owner of the Condominium Property shall have discharged its obligation for such repair and restoration as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

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

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

13.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner to this Declaration, and shall be payable from the date any such sum first due hereunder until paid in full, 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 annual rate of interest from time to time announced by The First National Bank of Chicago at Chicago, Illinois or other major bank in the City of Chicago if The First National Bank of Chicago ceases to exist, as its "corporate base rate" of interest or a reasonably equivalent substitute thereof in the event a corporate base rate is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "corporate base rate" or reasonable equivalent thereof is not announced by The First National Bank of Chicago, and no maximum lawful rate applies, then interest shall accrue at the annual rate of fifteen percent (15%).

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



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

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

13.9 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article XIII.

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

## ARTICLE XIV

### ARBITRATION

All questions, differences, disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$50,000, which amount shall increase by twenty percent (20%) every five (5) years from the date of the Agreement, or involving either of the following matters: (1) selection of an insurance company or apportionment of insurance premiums under Section 11.2 hereof and (2) appointment of an architect or a contractor or contractors pursuant to Section 12.6, 16.4 or 17.1 hereof which shall be not resolved within sixty (60) days after same shall arise, except where otherwise 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. Such arbitration may be initiated at the request of any Owner. 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 in equal shares by the Owners which are parties to such arbitration. The Owner requesting arbitration shall notify the Secured Property Lenders of its request to arbitrate within five (5) days thereafter. Any award of the arbitrators shall be final and binding upon the Owners and judgment thereon shall be entered by any court exercising jurisdiction over the Total Property or the Owners.

**ARTICLE XV****UNAVOIDABLE DELAYS**

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

**ARTICLE XVI****CONDEMNATION**

16.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any condemning authority (hereinafter in this Article XVI, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements shall be performed, in accordance with the requirements of this Article XVI and the provisions of this Article XVI shall at all times be subject to and subordinate to the rights of the Secured Property Lenders.

16.2 All Awards resulting from the taking of all or any part of the Total Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Secured Property Lenders and disbursed as hereinafter provided, subject to the rights of the Secured Property Lenders.

16.3 In the event of (a) a taking (other than a temporary taking) of a part of the Condominium Property only, or (b) a taking (other than a temporary taking) of a part of the Commercial Property only, then subject to the provisions of Section 16.6 hereof, the Owner of the portion of the Total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Secured Property Lenders by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article

XIX hereof and to retain any excess not required for such repair and restoration, and subject to the rights of the Secured Property Lenders.

16.4 In the event of a taking other than (a) a temporary taking described in Section 16.2 hereof, (b) a taking described in Section 16.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 16.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Secured Property Lenders. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and/or restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Property were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Secured Property Lenders, if required. In the event such Owners, and the Secured Property Lenders, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article XIV hereof. If such repair and restoration is to be performed solely in the portion of the Total Property Owned by one of the Owners then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined, the approval of the Owners of, and any Secured Property Lender with respect to, the other portion of the Total Property shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owners of, and any Secured Property Lender with respect to, the other portion of the Total Property be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Article IV and V hereof.

16.5 The Award for any taking described in Section 16.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 16.6 hereof) of the Improvements. Each portion of the Award attributable to a particular portion of the Total Property shall only be utilized to repair and restore that portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property over the cost of repair and restoration to that portion of the Total Property shall then be allocated to the respective Owners of that portion of the Total Property, or, if applicable, to the holder of a mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

16.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 16.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair

or restore the Improvements owned by it as may be required by Sections 16.3 and 16.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if all the Owners of the other portions of the Total Property affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Property owned by it and shall restore his portion of the Total Property to a slightly and safe condition and in such a manner as to safeguard the other portions of the Total Property, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 16.4 hereof are applicable.

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

16.8 To the fullest extent permitted by law, the provisions of Article XVI hereof shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (1) the obligation of the Unit Owners to repair or restore any portion of the Total Property subject to the Act in the event of a taking or (2) the use of the Award as provided in this Article XVI.

## ARTICLE XVII

### ARCHITECT

17.1 The appointment of an architect in accordance with this Article XVII shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Property. The Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article XIV. The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA document B141, 1977 Edition, entitled "Standard Form Agreement between Owner and Architect." Any Owner may cause any Architect to be replaced if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owners and the Secured Property Lenders, requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform diligently or competently in accordance with the Owner-Architect Agreement. If, in the opinion of the



Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 17.1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article XIV hereof.

17.2 In any instance when the Architect serving pursuant to Section 17.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Secured Property Lenders. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Secured Property Lenders, an opportunity to furnish information or data or to present such party's views.

17.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their proportionate share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment plus interest at the Default Rate from the date of payment by the Owner to the date of reimbursement to such Owner.

## ARTICLE XVIII

### DEPOSITARY

18.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 11.1(A) hereof and condemnation awards arising in connection with this Declaration shall be paid to the

Depository. Except as otherwise provided herein, the Depository appointed hereunder shall be one of the then five (5) largest title companies, banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

18.2 As used hereinafter in this Article, the phrase "Damaged Parcel" shall refer to any of the Condominium Property and Commercial Property, or any combination thereof if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Commercial Property or the Condominium Property, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcel shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depository or to appoint the Depository with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depository with regard to such funds.

18.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged Parcel is subject to a mortgage or trust deed held by Secured Property Lenders, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depository with regard to such funds.

18.4 In the event of any casualty loss which affects more than one portion of the Total Property and if one or more but less than all of the Damaged Parcels is or are encumbered by a mortgage or trust deed held by Secured Property Lenders, then such Secured Property Lenders and the Owner or Owners of the unencumbered Damaged Parcel or Parcels shall have the right, within thirty (30) days after such casualty loss, acting jointly, to appoint the Depository with regard to such funds.

18.5 If none of the provisions of Section 18.3 or 18.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depository. Upon the failure of such Owners to appoint the Depository within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration in accordance with Article XIV hereof and the arbitrator shall appoint the Depository.

18.6 As to any Damaged Parcel with regard to such funds which shall have been submitted to a Condominium Declaration pursuant to the Act, notwithstanding that any individual Unit purchasers may have granted mortgages or trust deeds encumbering all or any portion or portions of the Damaged Parcel, the right and power of the Owner of such Damaged Parcel to appoint the Depository under Sections 18.2 through 18.5 shall be exercised solely by the Condominium Association, and the Unit purchasers and their mortgagees shall be bound thereby.

18.7 Each Owner whose portion of the Total Property is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depositary in proportion to the proceeds from their respective insurance policies or respective condemnation awards, as the case may be. Any Depositary appointed to act hereunder shall execute an agreement with the Owners whose portion of the Total Property is the subject of any such casualty loss or condemnation accepting said appointment in form and content acceptable to such Owners and in accordance with the provisions of this Declaration.

18.8 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 claims said insurance proceeds or condemnation awards, then said Owner alone may authorize the Depositary to so proceed; provided further, however, that if the Commercial Property and/or the Condominium Property is in any material way affected by the disbursement of any such insurance proceeds or condemnation award or awards, then the consent of the holder of the appropriate Secured Property Lenders shall be required.

18.9 The monies on deposit shall be held in an interest bearing account pursuant to an agreement among the Depositary and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depositary, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, 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 Declaration. 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. Unless the Depositary shall have undertaken to pay interest thereon, monies received by the Depositary pursuant to any of the provisions of this Declaration shall not be mingled with the Depositary's own fund and shall be held by the Depositary in trust for the uses and purposes herein provided.

18.10 The Depositary may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Secured Property Lenders, appoint a substitute who qualifies under Section 18.1 hereof, and the 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, then the Secured Property Lenders shall appoint a substitute who qualifies under Section 18.1 hereof within thirty (30) days thereafter, 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 Secured Property Lenders shall fail to appoint a substitute within said additional thirty (30) day period, then the Depositary 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 18.1 hereof.

18.11 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Section 11.1(A) hereof or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depository unless the insurance proceeds or condemnation award are to be paid to more than one Owner.

## ARTICLE XIX

### DISBURSEMENTS OF FUNDS BY DEPOSITARY

19.1 (A) Each request by an Owner acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "work") shall be accompanied by a certificate of the applicable Owner, and with respect to the information described in Section 19.1(A)(2) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

(1) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, 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' Lien Act set forth in Chapter 770 of the Illinois Compiled Statutes (the "Mechanics' Liens Act") and any title insurer affording coverage against mechanic's 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 (which materials shall be adequately insured against fire, theft and other casualties).

(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) That the cost to complete the unfinished work will not exceed the funds or security therefor held by the Depository after payment of then current request.

(B) Upon compliance with the provisions of Section 19.1(A) (but not more frequently than once in each calendar month (thirty (30) day period)) and

(1) upon 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

(2) approval by the title insurer, the Owners, the Secured Property Lenders holding mortgages on portions of the Total Property on which or for the benefit of which work will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics' lien claims relating to work in place and the continued priority of the lien of the mortgage securing the Secured Property Lenders whose approval is required above,

the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects, and other persons named in the Owner'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 of the Secured Property Lenders 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 Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 19.1(A)

hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

## ARTICLE XX

### ESTOPPEL CERTIFICATES

20.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner or Secured Property Lender (subject to payment therefor pursuant to Section 20.2 hereof), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate ("Estoppel Certificate") stating:

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

(B) whether there is any existing default hereunder (or grounds therefore 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 Improvements within the previous forty-five (45) 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 amount thereof;

(D) whether the Owner executing the Estoppel Certificate has performed or is performing work, 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 Owner, and if there be any such work, specifying the nature and extent thereof;

(E) the nature and extent of any set-offs, 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 obligations 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 Declaration 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 XIV, 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 XXIV hereof; and

(J) such other facts or conclusions as may be reasonably requested.

20.2 The Owner of any portion of the Total Property which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge the requesting Owner a fee not more than Ten Dollars) for preparing, executing and delivering the Estoppel Certificate and may, in its sole discretion, limit to items (B) through (F) described above the statements made in the Estoppel Certificate.

20.3 So long as any portion of the Total Property remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of such portion of the Total Property subject to the Act shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owners of any portion of the Total Property subject to the Act from an Owner of a portion of the Total Property not subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Property subject to the Act.

## ARTICLE XXI

### CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Total Property is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of such portions of the Total Property, any consents, waivers, approvals and appointments which may be granted by an Owner, shall be exercised by the Condominium Association on behalf of the Owner of such portions of the Total Property, except for such rights or benefits expressly granted to Unit Owners and in the event of any such action taken by the Condominium Association, the Unit Owners shall be bound as if such Unit Owners had

expressly consented and agreed to such actions by the Condominium Association. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Unit Owners who are members of the Condominium Association shall be taken on behalf of the Condominium Association and on behalf of Unit Owners solely by the Condominium Association by its duly authorized officers acting pursuant to the authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium Association. Except as otherwise noted herein, any requirement for any Unit Owner to furnish a notice or deliver a document may also be performed by the Condominium Association. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, easements or privileges granted by this Declaration for the benefit of the Total Property or any part thereof. All obligations under this Declaration of the Owner of any portion of the Total Property subject to the Act shall be the obligations jointly and severally of both the Condominium Association and all Unit Owners in such portions of the Total Property and any lien arising against the Owner of any such portion of the Total Property may be imposed against the units of all such Unit Owners based upon their percentage of interest of the Common Elements appurtenant to such portion of the Total Property, which each Unit Owner may discharge in accordance with the provisions of Article XIII hereof.

## ARTICLE XXII

reserved

## ARTICLE XXIII

### ALTERATIONS

23.1 (A) Any Owner (hereinafter in this Article XXIII, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article XXIII, "Alterations") to the part of the improvements within such Altering Owner's portion of the Total Property, provided that such Alterations comply with the balance of this Section 23.1 and all of the other provisions of this Article XXIII. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations with the meaning of this Article XXIII. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual Unit Owners.



(B) Unless otherwise provided in Section 23.1(A) and this Section 23.1(B), the following Alterations shall not be made without the prior written consent of the Owners if such Alterations will:

(1) unreasonably diminish the benefits afforded to such other Owners by any Easement or unreasonably interrupt such other Owners use or enjoyment of any Easement,

(2) materially alter the facade of the Improvements except exterior signs for commercial tenants which are commercially reasonable. Signs for commercial tenants shall not extend beyond ( ) inches from the surface of the Building and shall contain no flashing lights. It is hereby deemed that signs existing as of the date of this Agreement are commercially reasonable.

(3) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property,

(4) affect Facilities benefiting other Owner other than minimally or incidentally, or

(5) materially change the expected pedestrian and vehicular traffic patterns of ingress and egress.

Subject to the foregoing provisions, the Owner of the Commercial Property shall have the right and is hereby granted the necessary easements to: (a) reconfigure any portion of the Commercial Property; and (b) undertake such changes in the Commercial Property as it reasonably desires to make.

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Secured Property Lenders, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Secured Property Lenders, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 23.1. If such other Owners and the applicable Secured Property Lenders consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Secured Property Lenders whose consents are requested 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 the Altering Owner has not requested the other Owners' consent to the proposed Alterations, and if, in the good faith opinion of the other Owners or the applicable Secured Property Lenders, the Altering Owner has violated or will violate the provisions of Section 23.1(A) or (B), such Owners or Secured Property Lenders (the "Objecting Party"), believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 23.1(A) or (B) 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 23.1(A) or (B), the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any of the 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 23.1 the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 23.1(A) or (B), then any Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 23.1(A) or (B) hereof.

(E) The Owners in making Alterations, shall (1) perform all work in a good and workmanlike manner and in accordance with good construction practices, (2) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (3) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Total Property in such a manner as to minimize any noise, vibration, particles and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portion of the Total Property, but such Owner shall not be liable in any event for damages as a result of any such disturbance.

23.2 Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owners in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said Owners 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 Owners from and against any and all loss, liability,

claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

23.3 An Altering Owner performing any work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (1) recognizes the separate ownership of the various Parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act shall only be enforceable against the portion of the Total Property owned by the Altering Owner, or (2) 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 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

23.4 Nothing contained in this Article XXIII shall give any Owner or Owners the right to construct any additional structures which may interfere with light, air or access to property of the other Owner or interfere with any Owner's right to derive the benefits of this Agreement.

## ARTICLE XXIV

### NOTICES

24.1 All notices, demands, elections or other communications required, permitted or desired to be served hereunder ("Notices") shall be in writing and shall be delivered in person or mailed as certified or registered matter, postage prepaid, return receipt requested, addressed as below stated:

For Notices to the Owner of the  
Condominium Property:

American National Bank and Trust  
Company of Chicago as Trustee under Trust  
Agreement dated October 10, 1996 and  
known as Trust Number 122176-000  
120 S. La Salle Street  
Chicago, Illinois 60604

with a copy to:

Jacob Reiss  
6767 N. Milwaukee Ave., Suite 202  
Niles, Illinois 60714

For Notices to the Owner of  
the Commercial Property:

American National Bank and Trust Company  
of Chicago as Trustee under Trust  
Agreement dated February 1, 1999 and  
known as Trust Number 124857-02  
120 S. La Salle Street  
Chicago, Illinois 60714

with a copy to:

Jacob Reiss  
6767 N. Milwaukee Ave., Suite 202  
Niles, IL 60714

The foregoing notwithstanding, at such time as any portion of the Total Property is submitted to the Act, Notice to the Owner of such portion of the Total Property shall be delivered or mailed, as aforesaid, to any officer, director or managing agent of the applicable Condominium Association at such address as may appear in any public record instead of the address set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provisions of Section 24.3 hereof.

24.2 Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Commercial Property or the Owner of the Condominium Property, a duplicate original of such notification shall be given to the Secured Property Lenders affected thereby at the address for the giving of notice set forth in the mortgage or trust deed securing indebtedness to such Secured Property Lenders, or to any other address of which notice by United States mail, return receipt requested, shall have been given to the other parties hereto. Any first lien Secured Property Lender shall have the right to cure any default by an Owner or Owners and such right to cure shall continue for thirty (30) days following the receipt by such Secured Property Lender of a notice of such default.

24.3 So long as any portion of the Total Property remains subject to the Act, (1) the Owner of the other portions of the Total Property may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property subject to the Act and (2) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portion of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.

24.4 Any Notice delivered as aforesaid shall be deemed received when delivered and receipted for and any Notice mailed as aforesaid shall be deemed received five (5) business days after deposit in the United States mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein

contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

## ARTICLE XXV

### RESERVED

## ARTICLE XXVI

### LIMITATION OF LIABILITY

26.1 Each Owner of a portion of the Total Property shall use reasonable diligence in performing the services required of such Owner, but shall not be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in case of an Emergency Situation.

26.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Property: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

26.3 The enforcement of any rights or obligations contained in this Declaration against an Owner of any portion of the Total Property shall be limited to the interest of such Owner in the Total Property. No judgment against any Owner of any portion of the Total property shall be subject to execution on, or be a lien on any assets of, such Owner other than that Owner's interest in the Total Property.

## ARTICLE XXVII

### GENERAL

27.1 In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Total Property and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate of interest in the Total Property. To that end, each Owner shall share information which it possesses relating to matters which are the



subject of this Declaration, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation and 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) (i) such other instruments, documents, materials and information as any other Owner hereto 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, and (ii) such grants of easements to and agreements with utility companies as any other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by such Owner, provided that the Secured Property Lenders which hold any mortgage on the portions of the Total Property on which such easement is granted have first consented in writing to such easements.

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

27.3 The headings of Articles in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.

27.4 (A) Except as otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by the Owners and the Secured Property Lenders. So long as any portion of the Total Property is submitted to the Act, the Condominium Association may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portions of the Total Property and the Owner of such portion of the Total Property, which amendments or termination shall be binding on all Unit Owners and the Owner of such portions of the Total Property. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

(B) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this

section shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.

27.5 Except for the perpetual Easements provided for under this Declaration, the covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time 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 ten (10) years, subject to amendment or termination as hereinabove set forth in Section 27.4 provided, however, that this Declaration, and all easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints or alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until such time as would be lawful and not in violation of such rule, statute or common law.

27.6 The provisions of this Declaration shall be construed to the end that the Total Property shall remain a first-class mixed-use property.

27.7 All the easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives, assigns, and to the holders of leasehold interest with the same full force and effect for the purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof.

27.8 Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement or unless the Easement has been abandoned for a period in excess of two (2) years.

27.9 The parties hereto acknowledge that this Declaration 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 Declaration and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois including, without limitation, matters affecting title to all real property described herein.

27.10 This Declaration 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 Secured Property Lenders) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

27.11 Each provision of the Recitals to this Declaration and each Exhibit attached hereto is hereby incorporated in this Declaration and is an integral part hereof.

27.12 No charges shall be made for any easements or rights granted hereunder unless otherwise provided or permitted under the terms of this Declaration.

## ARTICLE XXVIII

### RESTRICTION ON USE OF COMMERCIAL PROPERTY

28.1 The Owner of the Commercial Property shall be restricted from leasing all or any portion of the Commercial Property to a tenant which use may be considered a private or public nuisance by a court of local jurisdiction.

28.2 Notwithstanding the zoning which applies to the Commercial Property, the Commercial Property may not be used for the following uses:

- (A) Sale of or preparation of food prepared on premises or which requires exhaust/ventilation
- (B) Restaurant
- (C) Sale of liquor
- (D) Undertaking establishment
- (E) Crematories and mausoleums
- (F) Taverns
- (G) Pawn shops
- (H) Adult book stores
- (I) Adult theaters (live performances or motion pictures)

The current tenant of the Commercial Property, American Digital, is deemed not to violate the restrictions contained in this Article XXVIII.

**THIS DECLARATION** is executed by American National Bank and Trust Company of Chicago ("American"), not personally but solely in its capacities as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it in its capacities as such Trustee. All the obligations, duties, agreements, covenants, and conditions to be performed by American under this Declaration are undertaken by it solely in its capacity, as Trustee as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against American by reason of any of the terms, provisions, statements, obligations, duties, agreements, covenants, and conditions contained in this Declaration.

IN WITNESS WHEREOF, American, not personally but solely in its capacity as Trustee as aforesaid has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents by its (Assistant) Vice President and attested by its (Assistant) Secretary, this 16 day of FEB, 1999.

American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust Agreement dated October 10, 1996 and known as Trust No. 122176-00

By: [Signature]  
(Assistant) Vice President TRUST officer

ATTEST:

By: [Signature]  
(Assistant) Secretary

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.

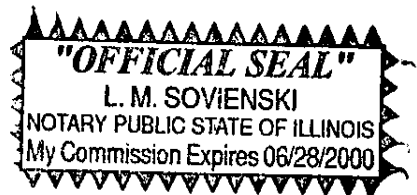
STATE OF ILLINOIS )  
COUNTY OF COOK )

I, L. M. SOVIENSKI, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that ELLEN F. NEARY and Mark J. De Grazia of American National Bank and Trust Company of Chicago of American National Bank and Trust Company of Chicago, known to me to be the same persons whose names are subscribed to the foregoing instrument as such TRUST OFFICER and ASSISTANT SECRETARY, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes thereto set forth.

FEB 16 1999

GIVEN under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 1999.

L. M. Sovienksi  
Notary Public



# UNOFFICIAL COPY

99157640

EXHIBIT A

TOTAL PARCEL

THE WEST HALF OF LOT 10 AND ALL OF LOT 11 IN BLOCK 6 IN OGDEN'S  
ADDITION TO CHICAGO, IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST  
OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, IL

17-080256-010

401 N. ABERDEEN  
CHICAGO, IL

Property of Cook County Clerk's Office



EXHIBIT B

Property of Cook County Clerk's Office

## EXHIBIT C

### PARCEL 1 (CONDOMINIUM PROPERTY)

ALL THAT PART OF LAND, PROPERTY AND SPACE LYING ABOVE AND ADJOINING A HORIZONTAL PLANE HAVING AN ELEVATION OF +11.30 (SAID ELEVATION BEING REFERENCED TO CHICAGO CITY DATUM); THE VERTICAL LIMITS THEREOF BEING REFERENCED TO A TRACT OF LAND DESCRIBED AS FOLLOWS: THE WEST HALF OF LOT 10 AND ALL OF LOT 11 IN BLOCK 6 IN OGDEN'S ADDITION TO CHICAGO, IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID TRACT OF LAND, PROPERTY AND SPACE, ALL THAT PART LYING BETWEEN A HORIZONTAL PLANE HAVING AN ELEVATION OF +11.30 AND A HORIZONTAL PLANE HAVING AN ELEVATION OF +22.31, BOTH PLANES BEING REFERENCED TO CHICAGO CITY DATUM; THE VERTICAL LIMITS THEREOF BEING THE SOUTH 51.34 FEET OF SAID TRACT OF LAND), ALL IN COOK COUNTY, ILL.

# UNOFFICIAL COPY

## EXHIBIT D

### PARCEL 2 (COMMERCIAL PROPERTY)

ALL THAT PART OF LAND, PROPERTY AND SPACE LYING BETWEEN A HORIZONTAL PLANE HAVING AN ELEVATION OF +11.30 AND A HORIZONTAL PLANE HAVING AN ELEVATION OF +22.31, BOTH PLANES BEING REFERENCED TO CHICAGO CITY DATUM; THE VERTICAL LIMITS THEREOF BEING REFERENCED TO THE SOUTH 51.34 FEET OF A TRACT OF LAND BEING DESCRIBED AS FOLLOWS: THE WEST HALF OF LOT 10 AND ALL OF LOT 11 IN BLOCK 6 IN OGDEN'S ADDITION TO CHICAGO, IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office