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EASEMENT AND OPERATING AGREEMENT

FOR

75

CAMPBELL COURTE AT VILLAGE
GREEN CONDOMINIUMS AND THE
SHOPS AT CAMPBELL COURTE

ARLINGTON HEIGHTS, ILLINOIS

ADDRESS:

140-220 West Campbell Street
Arlington Heights, Illinois

PINs: Part of 03-29-340-001

03-29-340-011

03-29-340-013

03-29-340-014

03-29-340-016

03-29-340-017

03-29-340-018

03-30-419-039

03-30-419-046 and

03-30-419-047

03-29-340-006
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INDEX TO
 CAMPBELL COURTE AT VILLAGE GREEN CONDOMINIUMS
 AND THE SHOPS AT **CAMPBELL** COURTE
EASEMENT AND OPERATING AGREEMENT

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EXHIBITS AND APPENDICES

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LIST OF EXHIBITS AND APPENDICES TO
CAMPBELL COURTE AT VILLAGE GREEN CONDOMINIUMS
AND THE SHOPS AT CAMPBELL COURTE
EASEMENT AND OPERATING AGREEMENT

| | |
|----------------|---|
| Exhibit A | Condominium Parcel Legal Description |
| Exhibit B | Commercial Parcel Legal Description |
| Exhibit C | Depositary Agreement |
| Exhibit 5.1(A) | Domestic Water and Heating and Cooling Facilities |
| Exhibit 5.1(B) | Maintenance of Outdoor Areas |

CAMPBELL COURTE AT VILLAGE GREEN CONDOMINIUMS
AND THE SHOPS AT CAMPBELL COURTE

EASEMENT AND OPERATING AGREEMENT

THIS EASEMENT AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 26th day of July, 2000 by and among CAMPBELL DEVELOPMENT, L.L.C., an Illinois limited ~~liability~~ company (the "Condominium Property Owner"), and BETA PROPERTIES, LLC, an Illinois limited liability company (the "Commercial Property Owner"). The Condominium Property Owner and the Commercial Property Owner sometimes are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS:

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

B. The Condominium Property Owner is the record legal title holder of (i) that parcel of real estate situated in the Village of Arlington Heights, County of Cook, State of Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "Condominium Parcel") and (ii) the Condominium Improvements. The person or persons or entity or entities (excluding occupants not possessing any fee simple ownership or tenants and the holders of any mortgage [whether a mortgage of the Condominium Property or of a Condominium Unit]) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Condominium Parcel and the Condominium Improvements, are hereinafter collectively referred to as the "Condominium Property Owner."

C. The Commercial Property Owner is the record legal title holder of (i) that parcel of real estate situated in the Village of Arlington Heights, County of Cook, State of Illinois, legally described on Exhibit B attached hereto and made a part hereof (the "Commercial Parcel") and (ii) the Commercial Improvements. The person or persons or entity or entities (excluding occupants not possessing any fee simple ownership or tenants and the holders of any mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Commercial Parcel and the Commercial Improvements, are hereinafter collectively referred to as the "Commercial Property Owner."

D. The Condominium Parcel and the Commercial Parcel together comprise the Project Site which consists of real estate in the Village of Arlington Heights, County of Cook, State of Illinois, bounded generally at grade level by Campbell Street to the south and property owned by unrelated third parties to the north, west and east. The Project Site is currently being improved with the Improvements.

E. The Project Site has been zoned as a Planned Unit Development pursuant to an ordinance adopted by the Corporate Authorities of the Village of Arlington Heights, Illinois as Ordinance No. 97-015 dated April 7, 1997 (which ordinance, as it may be amended from time to time, is hereinafter called the "PUD").

F. The Condominium Property Owner will construct (or cause to be constructed) upon and within the Condominium Parcel one or more buildings containing no more than ninety-two (92) Condominium Units, an underground parking garage and an outdoor parking area with related driveways and walkways, in accordance with the Plans (as hereinafter defined), which building or buildings constitutes the "Condominium Improvements".

G. The Commercial Property Owner will construct (or cause to be constructed on its behalf by the Condominium Property Owner) approximately 15,600 square feet of retail and commercial space, in accordance with the Plans, which constitute the "Commercial Improvements".

H. Neither the Condominium Improvements nor the Commercial Improvements is or will be structurally or functionally independent of each other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Condominium Improvements and the Commercial Improvements.

I. The Owners desire by this Agreement to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship among the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by creating (1) certain easements, covenants and restrictions against and affecting the Condominium Property which will be binding upon the Owners of the Condominium Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of the Owners of the Commercial Property, or of any portion thereof or interest or estate therein, and (2) certain easements, covenants and restrictions against and affecting the Commercial Property which will be binding upon the Owners of the Condominium Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of the Owners of the Condominium Property, or of any portion thereof or interest or estate therein.

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

ARTICLE I

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DEFINITIONS

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

AFFECTED OWNERS - As defined in Section 9.4.

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

ALTERATIONS - As defined in Section 14.I(A).

ALTERING OWNER - As defined in Section 14.I(A).

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

ARCHITECT - As defined in Section 18.1 .

ASSESSOR - The Assessor of Cook County, Illinois.

AWARD - As defined in Section 13.1.

COMMERCIAL IMPROVEMENTS - As defined in Recital G.

COMMERCIAL PARCEL - As defined in Recital C and as legally described in Exhibit B.

COMMERCIAL PROPERTY - A collective reference to the Commercial Parcel and the Commercial Improvements.

COMMERCIAL PROPERTY OWNER - As defined in Recital C.

CONDOMINIUM ACT - The Condominium Property Act, 765 ILCS 60511 et seq., or any successor statute of the State of Illinois as amended and in effect from time to time.

CONDOMINIUM ASSOCIATION - The condominium association, whether or not incorporated, formed for the purpose of administering the Condominium Property pursuant to the Condominium Act.

CONDOMINIUM DECLARATION - The instrument by which all or any portion of the Condominium Property is submitted to the provisions of the Condominium Act, as such instrument is amended from time to time.

CONDOMINIUM IMPROVEMENTS - As defined in Recital F.

CONDOMINIUM PARCEL - As defined in Recital B and as legally described in Exhibit A.

CONDOMINIUM PROPERTY - A collective reference to the Condominium Parcel and the Condominium Improvements.

CONDOMINIUM PROPERTY OWNER - As defined in Recital B.

CONDOMINIUM UNIT - A portion of the Condominium Property described in the Condominium Declaration as a "unit."

CONDOMINIUM UNIT OWNER - The person or persons or entity or entities (excluding occupants or tenants or holders of any mortgage) whose estates or interests individually or collectively, aggregate, from time to time, fee simple ownership of a Condominium Unit Ownership.

CONDOMINIUM UNIT OWNERSHIP - A collective reference to a Condominium Unit and its undivided percentage interest in the common elements of the Condominium Property, as more fully described in the Condominium Declaration.

CONSUMER PRICE INDEX - The Consumer Price Index U.S. Village Averages for Urban Wage Earners and Clerical Workers, All Items (Base Index Year 1982-84=100) published from time to time by the United States Department of Labor, Bureau of Labor Statistics. If such index is changed so that the base year of such index changes, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the manner in which the Consumer Price Index is determined by the Bureau of Labor Statistics shall be substantially revised, other than a change in the base index year, an adjustment shall be made by the Owners in such revised index which would produce results equivalent, as nearly as possible, to those which would have been obtained if such Consumer Price Index had not been so revised. If the Consumer Price Index becomes unavailable to the public because publication is discontinued, or otherwise, or if equivalent data is not readily available to enable the Owners to make the adjustment referred to in the preceding sentence, then the Owners will substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index is available, then a comparable index published by a university, a major bank or other financial institution or a comparable and recognized financial publication.

CORPORATE AUTHORITIES - The President and Board of Trustees of the Village of Arlington Heights, Illinois, or any successor board or body performing the functions performed by such President and Board of Trustees as of the date of this Agreement.

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

DEFAULTING OWNER - An Owner who has failed to perform any of its duties or obligations as and when required under this Agreement or to make payment of money owed under this Agreement to another Owner.

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

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

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

ESTOPPEL CERTIFICATE - As defined in Section 15.1.

FACILITIES - Facilities shall include, but are not limited to, any annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans; fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, **risers**, satellite dishes, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, and the like used in providing services from time to time in any part of the Property, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, internet, lightning protection, natural **gas**, plumbing, radio, recording, sanitary, security, sensing, telephone, television, vertical transportation, ventilation and water service, and any replacements of such items.

FIRST MORTGAGE - As defined in Section 20.12(A).

IMPACTED OWNER - As defined in Section 6.2.

IMPOSITIONS - All taxes and other governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against the Property, the Project Site or the Improvements, or any part thereof for any interest **therein**, including, without limiting the generality of the foregoing, all general and special real estate taxes and assessments (including, but not limited to, special assessments and special service area taxes) or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments, any taxes levied or a charge upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an Owner therein, all ad valorem taxes lawfully assessed upon the Improvements, the Project Site, the Improvements or any interest therein, all utility and other charges incurred by an Owner in the operation, maintenance, use, occupancy and upkeep of the Property, the Project Site, the Improvements or any interest therein, and any other charges lawfully made for improvements that may be secured by a lien on any portion of the Property.

IMPROVEMENTS - A collective reference to the Condominium Improvements and the Commercial Improvements and any other improvements located on the Project Site.

INDEMNIFYING OWNER - As defined in Section 6.1.

INDEMNITEE - As defined in Section 6.1.

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

LIENING OWNER - As defined in Section 6.2.

MAINTENANCE - Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, monitoring, cleaning, painting, installation, reconstruction, restoration and replacement when necessary or desirable of the Improvements or Facilities and which includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of these purposes, subject, however, to any limitations set forth elsewhere in this Agreement. As used in Article 5, Maintenance excludes obligations for which another Owner is responsible under Articles 4, 9 or 13.

MECHANICS LIEN ACT - The Mechanics Lien Act, 770 ILCS 60/0.01, **et seq.**, or any successor statute of the State of Illinois as amended or in effect from time to time.

MORTGAGE - As defined in Section 20.12(A).

MORTGAGEE - As defined in Section 20.12(A).

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

OWNER(S) - The Condominiwn Property Owner, the Commercial Property Owner, or either of them.

OWNER PROPERTY AREA RATIO - The ratio from time to time of the total gross square foot area of the Improvements owned by an Owner to the total gross square foot area of the Improvements, to be used for the purposes set forth in Section 4.3. From time to time at the request of any Owner, the Owners shall confirm in writing, in recordable form, the Owner Property Area Ratios then in effect.

PARCEL(S) - The Condominium Parcel, the Commercial Parcel, or any of them.

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

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

PLANS - The Plans entitled "Proposed 8 Story, 9]-Unit Masonry Building" dated February 30, 1999, prepared by Andrian-Zenenides, Ltd.", as on file with the Village.

PRIOR LIEN - As defined in Section 10.1.

PROJECT SITE - A collective reference to the Condominium Parcel and the Commercial Parcel.

PROPERTY - A collective reference to the Condominium Property and the Commercial Property.

PUD - As defined in Recital E.

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

STRUCTURAL SUPPORTS - All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Improvements. Dimensioned columns shown in areas labeled "NOT INCLUDED" on the plat of survey attached to the Condominium Declaration are part of the Condominium Improvements and the Condominium Property, and not the Commercial Improvements or the Commercial Property.

2000 EQUIVALENT DOLLARS - The equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2000. The 2000 Equivalent Dollars of any amount shall be determined by multiplying such amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 2000 from (y) the monthly Consumer Price Index last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 2000.

UTILITY COMPANY - Any Person, including a governmental or quasi-governmental body, furnishing water, electricity, sewer, **gas**, steam, telephone, communication, internet or cable or satellite television service or other services or materials generally known as utilities.

VILLAGE ZONING ORDINANCE - That certain ordinance of the Village of Arlington Heights known as "The 1959 Comprehensive Amendment of the Zoning Ordinance of the Village of Arlington Heights", which is Chapter 28 of the Municipal Code of the Village of Arlington Heights, or any successor ordinance as amended and in effect from time to time.

1.2 Construing Various Words and Phrases. Wherever it is provided in this Agreement that a Party "may" perform an act or do anything, it shall be construed that Party "may, but shall not be obligated to," so perform or so do. The following words and phrases shall be construed as follows: (i) "at any time" shall be construed as "at any time and/or from time to time;" (ii) "any" shall be construed as "any and all;" (iii) "including" shall be construed as "including, but not limited to;" (iv) "will" and "shall" shall each be construed as mandatory; (v) the word "and" when used in a list of items of which not all are required shall mean "and/or"; and (vi) the word "in" with respect to an Easement granted or reserved "in" a particular Parcel shall mean "in," "to," "over," "within," "through," "upon," "across," "under," and anyone or more of the foregoing. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Agreement and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Agreement. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Agreement for convenience only and shall not be used to construe the meaning of any part of this Agreement.

ARTICLE 2

EASEMENTS APPURTENANT TO CONDOMINIUM PARCEL

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

(A) The Commercial Property Owner is the grantor of the Easements described in this Article 2. The grants of Easements in this Article 2 shall bind and be enforceable against the Commercial Property Owner and its successors and assigns.

(B) The Condominium Property Owner is the grantee of the Easements described in this Article 2. The Easements shall benefit the Condominium Property Owner, the Condominium Association, the Condominium Unit Owners, and their respective successors, assigns and Permittees.

(C) The grant of an Easement by the Commercial Property Owner shall bind and burden the Commercial Property, which shall, for the purpose of this Article 2, be deemed to be the servient tenement. Where only a portion of the Commercial Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(D) The grant of an Easement to the Condominium Property Owner is appurtenant to and shall benefit the Condominium Property, which shall, for the purpose of this Article 2, be deemed to be the dominant tenement. Where only a portion of the Condominium Property is so benefitted, only that portion shall be deemed to be the dominant estate. No property other than the Condominium Property as it may exist from time to time in accordance with the terms of this Agreement shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Agreement, all Easements granted to the Condominium Property Owner are irrevocable and perpetual in nature.

(F) In exercising an Easement granted under this Article 2, the Condominium Property Owner shall minimize the impact of its exercise on the Commercial Property Owner, taking into consideration the economic impact of any disruption on the Commercial Property Owner, and shall comply with the provisions of Section 14.1 (E) whether or not the work being performed or exercise of the Easement constitutes "Alterations."

(G) The Commercial Property Owner may, (1) in connection with the Maintenance of its portion of the Improvements, or (2) in an Emergency Situation, or (3) if necessary under applicable Law to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of its portion of the Property, temporarily prevent, close off or restrict the **flow** of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest period of time reasonably necessary under the circumstances in order to minimize the effect on the use of such Easement, or the Commercial Property Owner may, from time to time, impose (1) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through such Owner's portion of the Property described in this Article 2, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement and (2) reasonable security controls consistent with the operation by such Owner of such Owner's portion of the Property and of its business on such Owner's portion of the Property

and any security system for the Property or any portion of the Property. In imposing limitations or controls, an Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the imposing Owner's own needs and requirements.

(H) Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

(I) Any disputes concerning the existence, location, nature and scope of any of the Easements granted under this Article 2 shall constitute an Arbitrable Dispute.

2.2 Ingress and Egress. The Commercial Property Owner hereby grants to the Condominium Property Owner a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Commercial Property as are, and only to the extent, reasonably necessary to permit the Maintenance of (a) the Condominium Improvements, (b) any Facilities located in the Commercial Property which provide or are necessary to provide the Condominium Improvements with any utilities or other services necessary to the operation of the Condominium Improvements, and (c) any other areas in the Commercial Property as to which an Easement for use or Maintenance has been granted to the Condominium Property Owner.

2.3 Structural Support. The Commercial Property Owner hereby grants to the Condominium Property Owner a non-exclusive easement in all Structural Supports, if any, located in or constituting a part of the Commercial Property for the support of (a) the Condominium Improvements and (b) any Facilities or areas located in the Commercial Property with respect to which the Condominium Property Owner is granted an Easement.

2.4 Use of Facilities. The Commercial Property Owner hereby grants to the Condominium Property Owner 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 which provide or are necessary to provide the Condominium Improvements with any utilities or other services necessary to the operation of the Condominium Improvements.

2.5 Common Walls, Ceilings and Floors. The Commercial Property Owner hereby grants to the Condominium Property Owner a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs, if any, constructed in and along the common boundaries of the Commercial Parcel and the Condominium Parcel which also serve as walls, ceilings or floors for the Condominium Improvements.

2.6 Utilities. The Commercial Property Owner hereby grants to the Condominium Property Owner (and if requested by the applicable Utility Company, the Commercial Property Owner shall grant to such Utility Company) non-exclusive easements for utility purposes, including

the right to install, lay, maintain, repair, and replace electrical conduits, wires and equipment, water mains and pipes, sewer lines, gas mains, wires and equipment and cables for transmission of **telephone**, television or other electrically transmitted information in the Commercial Property within the areas therefor as shown on the Plans. If, at any time, it shall become necessary to relocate or add to utility easements other than as shown in the Plans in order to provide utility service to the Condominium Property, the Commercial Property Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by the Commercial Property Owner and the Condominium Property Owner), provided (i) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Commercial Property for the purposes for which the Commercial Improvements were initially designed and constructed, (ii) the Commercial Property Owner shall not be required to grant any easement which would convert otherwise available leasable commercial or retail areas to such **use**, unless such relocation or additional easement is required by Law and no other space is reasonably available, and (iii) the Condominium Property Owner **shall** compensate the Commercial Property Owner for any damages, costs or expenses incurred by the Commercial Property Owner, including damages for breach of any lease, license or other agreement, lost profits and similar damages. Any such new or relocated utilities shall be designated on the Plans and, if necessary, the Plans shall be revised, acknowledged by the Owners and incorporated as an amendment to this Agreement.

2.7 Encroachments. The Commercial Property Owner hereby grants to the Condominium Property Owner an easement permitting the existence of encroachments if, by reason of the construction of the Improvements or the subsequent settlement or shifting of the Improvements, any part of the Condominium Improvements not originally designed to be located within the Commercial Parcel encroaches or shall hereafter encroach upon any part of the Commercial Parcel. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroaching portion of the Condominium Improvements continues to exist.

ARTICLE 3

EASEMENTS APPURTENANT TO COMMERCIAL PARCEL

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

(A) The Condominium Property Owner is the grantor of the Easements described in this Article 3. The grants of Easements in this Article 3 shall bind and be enforceable against the Condominium Property Owner and its successors and assigns.

(B) The Commercial Property Owner is the grantee of the Easements described in this Article 3. The Easements shall benefit the Commercial Property Owner and its successors, assigns and Permittees.

(C) The grant of an Easement by the Condominium Property Owner shall bind and burden the Condominium Property, which shall, for the purpose of this Article 3, be deemed to be the servient tenement. Where only a portion of such the Commercial Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(D) The grant of an Easement to the Commercial Property Owner is appurtenant to and shall benefit the Commercial Property, which shall, for the purpose of this Article 3, be deemed to be the dominant tenement. Where only a portion of the Commercial Property is so benefitted, only that portion shall be deemed to be the dominant tenement. No property other than the Commercial Property as it may exist from time to time in accordance with the terms of this Agreement shall constitute part of the dominant tenement.

(E) Unless otherwise expressly provided in this Agreement, all Easements granted to the Commercial Property Owner are irrevocable and perpetual in nature.

(F) In exercising an Easement granted under this Article 3, the Commercial Property Owner shall minimize the impact of its exercise on the Condominium Property Owner, taking into consideration the economic impact of any disruption on the Condominium Property Owner, and shall comply with the provisions of Section 14.1 (E) whether or not the work being performed or exercise of the Easement constitutes "Alterations."

(G) The Condominium Property Owner may, (1) in connection with the Maintenance of its portion of the Improvements, or (2) in an Emergency Situation, or (3) if necessary under applicable Law to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of its portion of the Property (other than as granted herein), temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the use of such Easement. Each Owner which is a grantor under this Article 3 may, from time to time, impose (I) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through such Owner's portion of the Property described in this Article 3, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement and (2) reasonable security controls consistent with the operation by such Owner of such Owner's portion of the Property and of its business on such Owner's portion of the Property and any security system for the Property or any portion of the Property. In imposing limitations or controls, an Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the imposing Owner's own needs and requirements.

(H) Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate as -and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

(I) Any disputes concerning the existence, location, nature and scope of any of the Easements granted under this Article 3 shall constitute an Arbitrable Dispute.

3.2 Ingress and Egress. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Condominium Property (except for the Condominium Units) as are, and only to the extent, reasonably necessary to permit the Maintenance of (a) the Commercial Improvements, (b) any Facilities located in the Condominium Property which provide or are necessary to provide the Commercial Improvements with any utilities or other services necessary to the operation of the Commercial Improvements and (c) any other areas in the Condominium Property as to which an Easement for use or Maintenance has been granted to the Commercial Property Owner.

3.3 Structural Support. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement in all Structural Supports, if any, located in or constituting a part of the Condominium Property for the support of (a) the Commercial Improvements and (b) any Facilities or areas located in the Condominium Property with respect to which the Commercial Property Owner is granted an Easement.

3.4 Use of Facilities. The Condominium Property Owner hereby grants to the Commercial Property Owner 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 which provide or are necessary to provide the Commercial Improvements with any utilities or other services necessary to the operation of the Commercial Improvements.

3.5 Common Walls, Ceilings and Floors. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs, if any, constructed in and along the common boundaries of the Condominium Parcel and the Commercial Parcel which also serve as walls, ceilings or floors for the Commercial Improvements.

3.6 Utilities. The Condominium Property Owner hereby grants to the Commercial Property Owner (and if requested by the applicable Utility Company, the Condominium Property Owner shall grant to such Utility Company) non-exclusive easements for utility purposes, including the right to install, lay, **maintain**, repair, and replace electrical conduits, wires and equipment, water mains and pipes, sewer lines, gas mains, wires and equipment and cables for transmission of telephone, television or other electrically transmitted information in the Condominium Property within the areas therefor as shown on the Plans. If, at any time, it shall become necessary to relocate or add to utility easements other than as shown in the Plans in order to provide utility service to the Commercial Property, the Condominium Property Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by the Condominium Property Owner and the Commercial Property Owner), provided (i) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Condominium Property for the purposes for which the

Condominium Improvements were initially designed and constructed, (ii) the Condominium Property Owner shall not be required to grant any **easement** through any Condominium Unit, and (iii) the Commercial Property Owner shall compensate the Condominium Property Owner for any damages, costs or expenses incurred by the Condominium Property Owner. Any such new or relocated utilities shall be designated on the Plans and, if necessary, the Plans shall be revised, acknowledged by the Owners and incorporated as an amendment to this Agreement.

3.7 Encroachments. The Condominium Property Owner hereby grants to the Commercial Property Owner an easement permitting the existence of encroachments if, by reason of the construction of the Improvements or the subsequent settlement or shifting of the Improvements, any part of the Commercial Improvements not originally designed to be located within the Condominium Parcel encroaches or shall hereafter encroach upon any part of the Condominium Parcel. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroaching portion of the Commercial Improvements continues to exist.

3.8 Condominium Improvements Roof.

(A) The Condominium Property Owner hereby grants a non-exclusive easement for (A) use of the roof of the Condominium Improvements to (1) the Commercial Property Owner for the installation, use and Maintenance of antennae, satellite dishes and other communication devices and equipment used from time to time by the Commercial Property Owner and its Permittees (including tenants of the Commercial Property Owner) for the Commercial Property and (B) on, across, over and through those portions of the Condominium Improvements (other than the Condominium Units) for the installation, use and Maintenance of wires, cables and conduits connecting such antennae, satellite dishes and other connection devices and equipment to the Commercial Property. Each of the antennae, satellite dishes and other communication devices and equipment shall be of dimensions and area reasonably satisfactory to the Condominium Property Owner and shall be installed in accordance with all Laws. The Commercial Property Owner's use of such items shall not interfere with other receptions from or transmissions to other Facilities on the roof including, without limitation, antennae, satellite dishes and other communication devices and equipment of the Condominium Property Owner located on such roof. The Owners will work together and cooperate in good faith to achieve the mutual best interests of all Owners under this Section 3.8. Installation of such items shall constitute an Alteration under Article 14, plans and specifications for which require consent of the Condominium Property Owner.

(B) In addition, at the request of the Commercial Property Owner, the Condominium Property Owner shall permit the Commercial Property Owner to lease and license portions of the roof to third parties (who may not be tenants of the Commercial Property) for locating antennae, satellite dishes and other communication equipment and Facilities serving all of the Property and/or other property. The net proceeds of any such lease or license (after deduction of the costs and expenses incurred by the Commercial Property Owner to obtain such lease or license and any costs and expenses that are the responsibility of the Commercial Property Owner under such lease or

license) shall be paid to the Condominium Association to be used to offset common expenses of the Owners under this Agreement.

3.9 Exterior Signs, Canopies, Awnings and Lighting and Exterior Facades.

(A) The Condominium Property Owner hereby grants to the Commercial Property Owner an exclusive easement for the installation, use, Maintenance, repair and replacement, at the sole expense of the Commercial Property Owner, of signage (including signs advertising the availability of any portion of the Commercial Property for sale or for rent), canopies, awnings and lighting on all exterior facades of the Condominium Improvements adjacent to the Commercial Property below the second floor of the Improvements. The colors, materials, lettering, size, method of attachment, operation (including illumination, animation and movement), text and other appearance of such signage, canopies, awnings and lighting shall be at the sole discretion of the Commercial Property Owner. The Condominium Property Owner hereby agrees that the Commercial Property Owner shall not be required to seek or obtain any consent or approval from the Condominium Property Owner or the Condominium Association for, and neither the Condominium Property Owner nor the Condominium Association may prevent or hinder, the installation, use, Maintenance, repair and replacement of any such signage, canopies, awnings and lighting by the Commercial Property Owner or its Permittees. The Commercial Property Owner or its Permittees shall be responsible for compliance of all signage, canopies, awnings and lighting with all Laws. The Commercial Property Owner or its Permittees shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use all signage, canopies, awnings and lighting.

(B) The Condominium Property Owner hereby grants to the Commercial Property Owner an exclusive easement for the installation, use, Maintenance, repair and replacement, at the sole expense of the Commercial Property Owner, of entrances and exits and display windows (including plate glass windows), and the right to create, modify and relocate such entrances and exits and display windows, on all exterior facades of the Condominium Improvements adjacent to the Commercial Property below the second floor of the Improvements.

3.10 Ingress and Egress For Parking. The Condominium Property Owner hereby grants to the Commercial Property Owner and its Permittees (to the extent such Persons use a parking space within the underground parking garage located within the Condominium Improvements pursuant to a lease, sublease or license or similar agreement or arrangement with a Unit Owner or the Condominium Association) a non-exclusive easement for ingress and egress for Persons, vehicles (with respect to clause (i) only), bicycles, material, equipment and other personal property (provided, however, that all deliveries of furniture, fixtures and equipment and merchandise and inventory of, or for use in, the Commercial Property must be made through the exterior entrances and exits of the Commercial Property or pursuant to Section 3.11) in, over, on, across and through (i) the underground parking garage located within the Condominium Improvements, (ii) the stairways identified on the Plans as Stair # 1 and Stair # 2, (iii) the elevators (between the underground parking garage and the first floor of the Improvements only) and elevator lobby, and (iv) the corridors connecting the elevator lobby with the walls adjacent to the Commercial Property (as shown on the

Plans) in order to (i) access and use the underground parking garage and (ii) provide access to and from the parking garage and the Commercial Property.

3.11 Ingress and Egress For Persons and Materials. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement on, over, across and through the outdoor areas of the Condominium Property (including all sidewalks, walkways and driveways) and the interior corridor along the north side of the first floor of the Condominium Improvements for (A) the delivery or dispatch of furniture, fixtures and equipment, merchandise, inventory, materials, supplies, goods, refuse and the like to and from the Commercial Property and (B) for ingress and egress of Persons in an Emergency Situation. The Commercial Property Owner is hereby granted the right to install doors in such locations as it desires connecting such corridor with the Commercial Property.

3.12 Ducts and Vents. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement for (i) the installation, use and Maintenance of ducts and vents within the Condominium Improvements and (ii) the use of such venting systems within the Condominium Improvements to carry exhaust air from the Commercial Property to the roof of the Condominium Improvements.

3.13 Ingress and Egress For Parking and Pedestrians. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement for ingress and egress for Persons, vehicles (but only in areas designed for vehicular traffic and parking), bicycles, material, equipment and other personal property in, over, on, across and through the outdoor areas of the Condominium Property in order to (i) access and use the parking areas and driveways located within the outdoor areas of the Condominium Property and (ii) provide access to and from such areas and the Commercial Property and public rights-of-way adjacent to the Property.

3.14 Use of Outdoor Areas. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement on, over, across and through the outdoor areas of the Condominium Property (including sidewalks and walkways) located within twenty (20) feet (measured perpendicularly) of the exterior of the Improvements for use from time to time for uses consistent with or ancillary to the retail and commercial uses of the Commercial Property, such as, without limitation, outdoor eating areas, sidewalk sales and community events, provided such uses do not materially unreasonably interfere with the Unit Owners use of such areas for ingress and egress.

3.15 Shared Trash Room. The Condominium Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement on, over, across and through the interior corridor along the north side of the first floor of the Condominium Improvements and the trash room and trash facilities within the Condominium Property for the transportation and discarding of refuse and garbage from the Commercial Property.

ARTICLE 4STRUCTURAL SUPPORT

4.1 Structural Safety and Integrity. No Owner shall do or permit any act which would adversely affect the structural safety or integrity of any portion of the Property, except in compliance with Article 14.

4.2 Reduction of Structural Support. If for any reason the structural support for any portion of the Improvements is inadequate or is reduced below the support required to maintain the structural safety or integrity of such portion of the Improvements, any or all Owners whose portion of the Property is affected by such reduction or inadequacy may request that the Architect or another structural engineer (who shall then act in the capacity of "Architect" under this Article 4) and a contractor (in each case reasonably acceptable to all Owners) review the adequacy of the support or extent of any such reduction and the need for or adequacy of any substitute or additional structural support. The Architect and contractor shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support. If the structural support has been reduced or is inadequate, the Owners shall attempt in good faith to determine which Owners are responsible (including such Owners' agents, contractors, engineers, architects and Permittees) for such inadequacy or reduction, and any Owner may submit such question to the Architect for its advice.

4.3 Construction of Additional Support

(A) If substitute or additional structural support is required in a portion of the Improvements in which the structural support is inadequate or has been reduced, then the Owner or Owners responsible for such inadequacy or reduction (except as provided in Section 4.3(B) where the Owners are expressly made jointly responsible), if the responsible Owner or Owners can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by or approved by the Architect and approved by the Owners of those portions of the Property (i) for which such substitute or additional structural support is required, and (ii) in which such substitute or additional structural support is to be constructed, and (iii) which could be affected by the construction of such substitute or additional support; provided, however, that if the Owners are expressly made jointly responsible, then the approval of all Owners shall be required. The responsible Owner or Owners shall be severally liable to pay all costs and expenses, including the Architect's fees and any other architectural fees, in connection with construction of the substitute or additional support (at an amount equal to the ratio of each responsible Owner's Owner Property Area Ratio to the sum of such responsible Owners' Owner Property Area Ratio), and if a responsible Owner has paid more than its proportionate share of liability, such Owner shall be entitled to contribution or reimbursement from the other responsible Owner or Owners in proportion to the other responsible Owner's or Owners' share of liability. The provisions of Sections 9.3 and 9.4, and

not this Article 4, shall apply if the reduction or inadequacy in structural support results from a fire or other casualty. An Owner may be "responsible" for inadequate or reduced structural support if such Owner provided information to the design professionals or contractor which resulted in such inadequacy or reduction in structural support.

(B) If the responsible Owner or Owners cannot be determined for any reason, or if the reduction or inadequacy in structural support results from a defect in the original construction of any portion of the Property, then all Owners shall be responsible jointly for substitute or additional structural support and shall share all costs and expenses as provided in this Section 4.3(B). For purposes of this Section 4.3, a defect in the original construction of a portion of the Property does not include structural matters which arise out of improper maintenance by the other Owner or which constitute required or ordinary maintenance responsibilities. In any case where there is a responsible party other than an Owner, the Owners will jointly pursue appropriate legal and equitable remedies against the responsible party. If joint action is not legally possible, then the Owner or Owners who have a remedy against the responsible party will pursue enforcement for the benefit of all Owners. Where damages are recovered from third parties, the Owners shall apply amounts recovered in the following priority: first, to the costs of suit; second, to payment of costs and expenses of providing substitute or additional support; third, to damages suffered by the Owners as a result of such reduction or inadequacy in structural support, to each Owner in the ratio of damages suffered by such Owner to total damages suffered by the Owners; and fourth, the balance, if any, to the Owners in the Owner Property Area Ratio. Each Owner, whether pursuing enforcement or not, shall share the costs and expenses (including any fees of the Architect for advice or preparation of plans and specifications) of substitute or additional support and any enforcement action under this Section 4.3(B), in the Owner Property Area Ratio, to the extent such costs and expenses are not recovered from third parties.

(C) The construction of such substitute or additional support shall be performed by a contractor or contractors jointly selected by the Owners of those portions of the Property (i) for which such substitute or additional support is required, and (ii) in which such substitute or additional support is to be constructed, and (iii) which could be affected by the construction of such substitute or additional support; provided, however, that if all Owners are expressly made jointly responsible under Section 4.3(B), then the selection by all Owners shall be required (which selection shall be subject to the approval of the Mortgagees of such Owners). In the event such Owners, and the Mortgagees of such Owners, fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect.

4.4 Effect of Delay. If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portion of the Improvements, and it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner or Owners of the portion of the Property in which the reduction occurred or is occurring shall, upon not less than ten (10) 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 required, or the Owners shall jointly undertake to pro-

vide substitute or additional structural support; **provided**, however, the responsible Owner (or Owners otherwise liable for a share of costs and expenses of providing substitute or additional structural support) shall be liable for and pay all costs and expenses incurred as a result of any other Owner's provision of any required substitute or additional support.

ARTICLES

SERVICES TO OWNERS

5.1 Services by the Condominium Property Owner to the Commercial Property Owner. The Condominium Property Owner shall furnish or cause to be furnished the following services to the Commercial Property Owner when, as and if required:

(A) Domestic Water; Facilities for Heating and Cooling. Maintenance of Facilities providing for delivery of domestic water and heating and cooling upon the terms and conditions set forth in Exhibit 5.1(A).

(B) Maintenance of the Outdoor Areas of the Condominium Property. Maintenance of the outdoor areas of the Condominium Property upon the terms and conditions set forth in Exhibit 5.1(B).

(C) Master Antenna/Satellite (or Cable) Television and Entertainment Services. Upon the request of the Commercial Property Owner, Maintenance of Facilities for the provision of master antenna/satellite (or cable) television and entertainment services to the Commercial Property. There shall be no cost for the provision of such Maintenance, but the Commercial Property Owner shall pay to the satellite or cable television and entertainment service provider directly its charges for the use of such services by the Commercial Property Owner and directly (or in reimbursement of the Condominium Property Owner if the Condominium Property Owner is billed by the provider) the costs of installing any additional Facilities to provide such service to the Commercial Property Owner.

(D) Other Services. If the Condominium Property Owner shall furnish or cause to be furnished other services to (and at the request of) the Commercial Property Owner (including, without limitation, services from Facilities such as fire prevention and suppression systems and security systems), then the Commercial Property Owner shall reimburse the Condominium Property Owner for the costs of Maintenance of such Facilities at the percentage set forth in Section 2 of Exhibit 5.1(A) and for variable **charges**, if any, at the percentage and in the manner set forth in Section 3 of Exhibit 5.1(A).

5.2 Obligation to Furnish Services. The Condominium Property Owner shall make a good-faith effort to operate its Facilities and furnish all services as required under this Article 5 in a manner consistent with a first-class mixed-use residential/commercial property and the level of

operation and management of comparable properties. The Condominium Property Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 5 but shall not be liable under this Article 5 for interruption or inadequacy of service or loss or damage to property or business arising out of such interruption or inadequacy except to the extent resulting from such Owner's gross negligence or willful misconduct and except as may be provided in Section 5.3. The Condominium Property Owner reserves the right to curtail or halt the performance of any service under this Article 5 at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation. Each Owner who is obligated to maintain, repair and replace any Facilities under Sections 9.1, 9.2 and 9.3 which are connected to other Facilities in the Property, the Maintenance of which is the responsibility of another Owner under this Article 5, shall perform its obligations under Sections 9.1, 9.2 and 9.3 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under this Article 5.

5.3 Condominium Property Owner's Failure to Perform Services.

(A) If the Condominium Property Owner shall fail to perform as required by the terms and conditions of Section 5.1 of this Agreement (except when such failure is caused by the Owner for whom such services were to be performed or by Unavoidable Delay) and if such failure shall continue for a period of ten (10) days after written notice thereof to the Condominium Property Owner from the Commercial Property Owner, the Commercial Property Owner shall have the right to perform such service (without limiting any other rights or remedies of the Commercial Property Owner) until such time as the Condominium Property Owner cures its failure to perform and the Condominium Property Owner shall, upon demand, reimburse the Commercial Property Owner for the actual costs and expenses incurred by the Commercial Property Owner in performing such service during such period. Such notice shall not be required in an Emergency Situation affecting the Commercial Improvements or any of its occupants.

(B) If a dispute exists as to whether the Condominium Property Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate an Owner's rights under Section 5.3(A).

5.4 Discontinuance of Services. Except as expressly set forth in this Agreement, the Condominium Property Owner may not discontinue furnishing any services to another Owner as required by this Article 5.

5.5 Replacement of Facilities. An Owner may, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better.

5.6 Conflict with Other Provisions. The provisions of Articles 4, 9 and 13 control over provisions of this Article 5 where such provisions are inconsistent with provisions of this Article 5.

ARTICLE 6

INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; ZONING

6.1 Indemnity by Owners. Each Owner (hereinafter in this Section 6.1, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to **indemnify**, defend and hold harmless the other Owners (hereinafter in this Section 6.1, collectively the "Indemnitee") from and against any and all claims, including any actions or proceedings, against the Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the **Indemnifying Owner's**, as well as the Indemnifying Owner's employees', agents', licensees' and invitees' use, possession or management of the **Indemnifying Owner's** portion of the Property or activities therein or arising out of the **Indemnifying Owner's** use, exercise or enjoyment of an Easement or Facility, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the **Indemnifying Owner**, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to the Indemnitee.

6.2 Liens. Each Owner (hereinafter in this Section 6.2, the "Liening Owner") shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other similar lien arising by reason of the Liening Owner's act or acts of its agents and contractors or any work or materials which it or its agents or contractors has ordered (A) on the other Owners' portion of the Property, or (B) on its own portion of the Property, if the existence or foreclosure of such lien on its own portion of the Property or would adversely affect any Easement benefitting the other Owner or services to be furnished to the other Owner pursuant to Article 5 (such other Owner in (A) or (B) shall be referred to in this Section 6.2 as the "Impacted Owner"). The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if: within such thirty (30) day period, (A) such lien cannot be foreclosed, and (B) the Liening Owner (i) shall diligently proceed in good faith to contest such lien by appropriate proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Impacted Owner, at the Impacted Owner's option, either: (a) cash or a surety bond from a responsible surety company reasonably acceptable to the Impacted Owners in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued on such lien claim or such greater amount as reasonably may be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (b) other security or indemnity reasonably acceptable to the Impacted Owners'

title insurance company and the Impacted Owners. In any case, a Liening Owner must remove or release such lien prior to its foreclosure. In the event the Liening Owner fails to comply with the foregoing provisions of this Section 6.2, such Liening Owner shall become a Defaulting Owner, and the Impacted Owners shall become Creditor Owners and may take such actions as the Creditor Owners may deem necessary to defend against or remove such lien. The Creditor Owners shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees) paid or incurred by the Creditor Owners in defending against, removing or attempting to defend against or remove such lien and may use any security delivered to the Creditor Owners for such purposes and for any other damages from the Defaulting Owner's breach under this Section 6.2.

6.3 Compliance With Laws. The Owners:

(A) shall each comply with all Laws, if noncompliance by such Owner with respect to its portion of the Property or any part thereof or areas for which such Owner has been granted an exclusive Easement 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 Property itself or would jeopardize any other Owner's right to occupy or utilize beneficially its respective portion of the Property or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner; and

(B) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property or any portion thereof or the requirements of any insurance coverage on any other Owner's portion of the Property or if noncompliance by such Owner with respect to its portion of the Property or any part 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 (unless the non-complying Owner pays all such increases), or (ii) render any other Owner's portion of the Property uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of the Property; provided, however, that if such compliance is required solely because of the nature of the use, possession and management of or activities in the other Owner's portion of the Property, such other Owner shall be liable for the costs and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance, and such failure to proceed shall adversely and materially affect any other Owner (then such Owner who has failed to proceed shall become a Defaulting Owner and the other Owners shall become Creditor Owners), and such Creditor Owners may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owners may cause such compliance to occur by **taking** all appropriate steps to cure such noncompliance. The Creditor Owners shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees) incurred by the Creditor Owners in connection with causing any such compliance to occur.

6.4 Zoning; Use.

(A) Without limiting the provisions of Section 6.3(A), neither the Condominium Property Owner nor the Commercial Property Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Property, or (iii) take or fail to take any action which would violate the provisions of any Laws or the Village Zoning Ordinance or the PUD, as such ordinances may be amended from time to time.

(B) Neither Owner may take any actions or file any petitions to amend the PUD without the prior written consent of the other Owner.

(C) Each Owner shall execute such applications or other instruments as may be necessary to obtain any zoning variation or amendment conforming with the provisions of this Section 6.4; provided, however, the Owner requesting such zoning variation or amendment shall **indemnify** and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of such applications or other instruments. If any Owner fails to execute any such applications or instruments when required hereunder to do so, the Owner requesting such zoning variation or amendment is hereby irrevocably appointed attorney-in-fact of such Owner (such power of attorney being coupled with an interest) to execute such application or instruments on behalf of such Owner.

(D) The Condominium Property Owner shall operate and use the Condominium Property only as a first-class residential condominium property and may not use the Condominium Property for any use other than residential purposes and uses ancillary to residential purposes. The Commercial Property Owner shall operate and use the Commercial Property only as a first-class commercial and/or retail property and may not use the Commercial Property for any other use.

ARTICLE 7

REAL ESTATE TAXES

7.1 Separate Assessment. The Owners shall cooperate with each other and make good faith efforts so that the Condominium Property and the Commercial Property shall, when possible, be assessed separately by the Assessor and taxed as two (2) or more separate parcels of real estate. If at any time there is a separate assessed valuation determinable based on an examination of the Assessor's records (but not a separate tax bill or bills) for each of the two, or more, parcels, real estate taxes for any combined parcels shall be allocated between the Parcels based on the ratio of the assessed valuation for such Parcels. The Condominium Property Owner shall pay the real estate taxes levied upon the Condominium Property and the Commercial Property Owner shall pay the real estate taxes (if any) levied upon the Commercial Property during any period when the Condominium Property and the Commercial Property are separately assessed and taxed. Each Owner shall be

entitled independently to cause such Owner's portion of the Property to be assessed and taxed as two (2) or more separate parcels of real estate.

7.2 Reference to Taxes in Leases. For purposes of this Agreement and any documents or instruments, such as leases, referring to the allocation of real estate taxes pursuant to this Agreement, the real estate taxes allocated to a portion of the Property shall mean those taxes assessed and payable with respect to such portion of the Property as long as such portion of the Property is separately assessed and taxed.

7.3 Failure to Pay Taxes. If a 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 7, and if such unpaid tax or charge is a lien or encumbrance on any portion of the Property or Improvements and any lawful authority would thereafter have the right to sell or otherwise foreclose against any portion of the Property or Improvements owned by any other Owner or to impair or extinguish any Easement benefitting any other Owner by reason of such nonpayment, then the Creditor Owner or Owners may, after ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owners for the amount of such payment, including the amount of any interest or penalty amounts that accrued thereon.

7.4 No Separate Bill. If at any time after the initial tax division is effected there is not a separate assessed valuation which can be determined by an examination of the Assessor's records and tax bills for the Condominium Property and the Commercial Property, real estate taxes for which no separate assessed valuation can be so determined shall be allocated to each Owner not separately assessed and taxed based on the ratio of (a) respective appraised value of each portion of the Property for which such Owner is obligated to pay real estate taxes (as set forth in Section 7.1) which is not included in a separate tax bill to an Owner, to (b) the total appraised values of such parcels not included in a separate tax bill to an Owner. The Owners shall jointly select a single appraiser to determine such appraised values, whose determination shall be binding on the Owners. If the Owners affected by such allocation cannot agree on a single appraiser, such matter shall be an Arbitrable Dispute.

ARTICLE 8

INSURANCE

8.1 Insurance Required. The Condominium Property Owner and the Commercial Property Owner shall procure and maintain the following insurance:

(A) Real and Personal Property - The Condominium Property Owner shall keep the Condominium Improvements insured for no less than "all risk" coverage on real property and personal property owned by the Condominium Property Owner used in the operation of the

Condominiwn Improvements for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. The Commercial Property Owner shall keep the Commercial Property insured for no less than "all risk" coverage on real property and personal property owned by the Commercial Property Owner used in the operation of the Commercial Property for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.

(B) Public Liability - The Condominium Property Owner and the Commercial Property Owner shall each (1) insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Project Site, or as a result of operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained in this Agreement), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of first-class commercial or residential buildings (as the case may be) in the greater Chicago area, but in all events for limits, as to each Owner and its portion of the Property, of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for personal and bodily injury or property damage with an amount not less than \$5,000,000 umbrella coverage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

(C) Flood and Earthquake - The Commercial Property Owner and the Condominium Property Owner, in addition to "all risk" property insurance required under Section 8.1 (A), shall each insure their respective portions of the Property against earthquake and flood risks in an amount equal to the replacement cost thereof or such lesser amount as then may be reasonably available in the insurance market; both subject, however, to deductibles available and reasonable for such types of insurance.

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

(E) Worker's Compensation. Each Owners shall carry worker's compensation insurance in amounts as required by Law and employer's liability insurance in not less than the following

amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee; bodily injury by disease, \$1,000,000 policy limit.

8.2 Insurance Companies. Insurance policies under this Article 8 shall be coordinated so that there are no gaps in coverage, and the insurance company or companies shall agree that the entire Property will be covered among the Owners' separate policies. Insurance policies required by Section 8.1 shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than ANII (or such lesser rating as the Owners and Mortgagees may agree) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

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

8.4 Limits of Liability. Insurance specified in this Article 8 or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually (unless there is a substantial change in the Property or operations conducted in the Property), to determine if such limits, deductible amounts and types of

insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred and the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations, or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Sections 8.1 (A), 8.1(C) and 8.1(E) shall not exceed \$25,000; provided, however, such maximum shall not apply to the Village of Arlington Heights in the event it elects to self-insure risks under Section 8.7. Deductible amounts for insurance required under Section 8.1 (B) shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described in this Section 8.4. Limits of liability may not be less than limits required by Mortgagees, notwithstanding amounts set forth in this Article 8. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon such review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of the Mortgagees. With the consent of all Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared equally by the Owners.

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

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

8.7 Self-Insurance. Notwithstanding anything to the contrary contained in this Article 8, the Commercial Property Owner may self-insure the risks under either or both Sections 8.1(A) and 8.1(B), in which case the Commercial Owner shall not be required to obtain and pay for insurance from a third-party beneficiary as required under such Section or Sections upon notice to the Condominium Property Owner. Self-insured amounts shall be deposited with the **Depository** and disbursed in the same manner as insurance proceeds.

ARTICLE 9

MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

9.1 Maintenance of Condominium Improvements. Except as expressly provided in Section 5.1 relating to Maintenance of certain Facilities and areas of the Property or this **Article 9**, in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under Article 5, the Condominium Property Owner shall, at its sole cost and expense, maintain and keep the Condominium Improvements, including all Facilities located in 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 such repairs or replacements are to the interior or exterior of such property, or structural and non-structural components of such property, or involve **ordinary** or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Commercial Property Owner acknowledges and agrees that portion of the foregoing Maintenance obligations that relate to Condominium Units shall be performed by the Condominium Unit Owners of such Condominium Units; provided, however, that the Condominium Property Owner shall cause such Condominium Unit Owners to so perform such obligations. The Condominium Property Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.

9.2 Maintenance of Commercial Improvements. Except as expressly provided in Section 5.1 relating to Maintenance of certain Facilities and areas of the Property or in this Article 9, in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under Article 5, the Commercial Property Owner shall, at its sole cost and expense, maintain and keep the Commercial Improvements and all structures and Facilities 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 such repairs or replacements are to the interior or exterior of such property, or structural or non-structural components of such property, or involve **ordinary** or extraordinary repairs or replacements, necessary to keep the such property in safe first-class order and condition, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Commercial Property Owner agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to its property.

9.3 **Damage Affecting Only Condominium Improvements or Commercial Improvements.** If any portion of the Property is damaged by fire or other casualty, then any such damage shall be repaired and restored by the Owner of the portion of the Property 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 17, be entitled to withdraw any insurance proceeds (including deductible and self-insurance amounts held by the Depositary 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 adversely and materially affecting an Easement in favor of the other Owner or Owners or services to be furnished the other Owners under Article 5, then (i) the Creditor Owners 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 ten (10) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then the Creditor Owners may perform such repair and restoration and may take all appropriate steps to carry out such repair and restoration; or (ii) in an Emergency Situation the Creditor Owners may immediately perform such repair or restoration and may take all appropriate steps to carry out such repair and restoration. The Creditor Owners in so performing such repair and restoration shall, in accordance with Article 17, be entitled to withdraw any insurance proceeds and any other monies held by the Depositary as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owners in excess of such insurance proceeds. Repair and restoration under this Section 9.3 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owners' consent if such consent would not otherwise be required under Article 14 and Section 14.1(E)(iii) shall not apply.

9.4 **Joint Damage.** If the Property is damaged by fire or other casualty and if the provisions of Section 9.3 are not applicable because the damage occurred to both the Condominium Improvements and the Commercial Improvements, the repair and restoration of only that portion of such damage which does not fall within those categories shall be the joint responsibility of the Owner or Owners in whose portion of the Property the damage occurs or whose Facilities are damaged (the "Affected Owners"). Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Affected Owners by a contractor or contractors jointly selected by the Affected Owners, which selection shall be subject to the approval of the Mortgagees if the approximate cost of the repair and restoration is greater than \$500,000.00 (in 2000 Equivalent Dollars). Participation by an Affected Owner in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of, its actual areas or Facilities damaged. In the event the Affected Owners, and their Mortgagees, if required, fail to agree upon the selection of a contractor or contractors, the Affected Owners shall request the advice of the Architect. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Affected Owners otherwise agree upon another person or entity to prepare them, subject to the approval of their Mortgagees, in accordance with instructions given by all Affected Owners. Such plans and specifications shall provide for the damaged portion of the

Property to be rebuilt as nearly identical as commercially practicable to the damaged portion of Property as constructed prior to the **damage** unless prohibited by law or unless the Affected Owners otherwise agree, subject to the approval of their Mortgagees and subject to the consent of other Owners under Section 14.I(B) where required. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to each of the Affected Owners, and their Mortgagees, a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Affected Owners otherwise agree (subject to the approval of their Mortgagees if the approximate cost of the repair and restoration is greater than \$500,000.00 (in 2000 Equivalent Dollars)), any contractor or contractors shall work under the supervision of the Architect (or other architect or engineer preparing the plans and specifications), and the Architect (or other architect or engineer preparing the plans and specifications) is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Affected Owners and their Mortgagees, as such repair and restoration progresses, to disburse in accordance with Article 17, the insurance proceeds (including deductible and self-insurance amounts) held by the Depositary and any other monies deposited with the Depositary pursuant to Section 9.6 for application against the cost and expense of any such repair and restoration.

9.5 Cost of Repairs. If the cost and expense of performing any repair and restoration provided for in Section 9.4 shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, including deductible and self-insured amounts, then such excess cost and expense (or the entire amount of such cost and expense, if there are no insurance proceeds) shall be borne by the Owners, in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Property. Notwithstanding the foregoing, if an Owner has not carried the insurance required under Article 8 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

9.6 Deposit of Costs. In any instance of repair or restoration pursuant to Section 9.4, the Condominium Property Owner or the Commercial Property Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum has already been executed. If the estimate or stipulated sum, or if the actual amount incurred in performing such 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 Section 9.5. In the event the Commercial Property Owner elects to self-insure any risk as permitted under Section 8.7, the Commercial Property Owner shall deposit with the Depositary the entire cost and expense attributable thereto, and not just excess costs. Any Owner maintaining deductible amounts shall deposit the deductible amounts. In lieu of depositing its share of such excess amount or such deductible amount based upon such estimate or stipulated sum, or actual cost and expense

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

9.7 Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage to the Property, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by such Owner or by such Owner's insurance company bears to the total insurance proceeds made available by all Owners and such Owners' insurance companies for the repair and restoration or, if the insurance is provided by a single policy covering the Property, then the ratio of insurance proceeds attributed to such Owner's portion of the Property by the insurer or the Owners to the total insurance proceeds made available by the insurer or the Owners for the repair and restoration. The rights of the Owners to payment of excess insurance proceeds, if any, shall be subject to the provisions of Section 20.12. For purposes of this Section 9.7, insurance proceeds include deductible amounts and amounts contributed by the Village of Arlington Heights, in the event it elects to self-insure.

9.8 Agreement Not to Repair. If the Property is destroyed or substantially damaged, and the Condominium Property Owner (subject to the Condominium Act) and the Commercial Property Owner agree not to rebuild, repair or restore the Property, subject to the written approval of the Mortgagees of the Condominium Property Owner and the Commercial Property Owner, then the Property shall be demolished to the extent necessary to comply with all applicable Laws. In such event, the available insurance proceeds, other than insurance proceeds used to cause demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner or by such Owner's insurance company to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Property, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Property to the total insurance proceeds paid by reason of such damage. If the Owners agree not to rebuild, repair or restore the Property, the rights of the Owners to receive available insurance proceeds, if any, shall

be subject to the rights of the Mortgagees with respect to the applicable Owner's share of any such available insurance proceeds. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 9.4, 9.5, 9.6 and 9.9 are applicable except that demolition, and not construction, shall be performed. In the event the Condominium Property Owner and the Commercial Property Owner agree not to rebuild the Property, subject to the written approval of the Mortgagees of such Owners, they may also make provision for sale of the Project Site by the Owners and distribution of sale proceeds, all subject to the written approval of the Mortgagees of the Condominium Property Owner and the Commercial Property Owner. For purposes of this Section 9.8, insurance proceeds include self-insured amounts contributed by the Commercial Property Owner.

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

9.10 Restoration of Condominium Property. In the event of fire or other "disaster" (as such term is used in the Condominium Act) causing damage to any portion of the Condominium Property which would entitle the Condominium Property Owner, under the Condominium Act or the Condominium Declaration, not to repair and restore such Property as required by this Agreement or not to use insurance proceeds to repair and restore such Property, notwithstanding the foregoing Sections of this Article 9, then prior to disbursement of any insurance or other proceeds to Condominium Unit Owners and no later than one hundred twenty (120) days after occurrence of the fire or other disaster in any event, if affirmative action and provision has not been taken by such date by the Condominium Property Owner to repair and restore such Property, the Condominium Property Owner shall pay the Commercial Property Owner an amount necessary so that the Commercial Property Owner shall have sufficient proceeds to demolish or repair and restore the Property to a condition so as adequately to assure:

- (A) the structural integrity and safety of the Property;
- (B) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency having jurisdiction of the Property; and
- (C) the architectural unity and aesthetic appearance of the restored Property as first-class mixed-used residential and commercial property.

ARTICLE 10**LIENS, DEBTS, INTEREST AND REMEDIES**

10.1 **Failure to Perform.** If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Agreement (thereby becoming a Defaulting Owner), then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) a lien against the portion of the Property or Project Site owned by the Defaulting Owner and (ii) for a default under Article 9, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Property or Project Site or otherwise under insurance policies carried pursuant to Article 8 to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in a manner similar to a foreclosure of a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity or as provided for in Section 10.2. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("Default Amount") shall have been paid in full. A Creditor Owner's liens provided for in this Section 10.1, shall be superior to and take precedence over any mortgage, trust deed or other encumbrance (including a mortgage or trust deed on a Condominium Unit) other than a Prior Lien constituting a lien on the portion of the Property or Project Site owned by the Defaulting Owner. A "Prior Lien" means (i) a First Mortgage (including a mortgage or trust deed on a Condominium Unit) which has been recorded against the Property or Project Site, or against a portion of either, prior to the time of the recording of the Creditor Owner's notice of lien and (ii) with respect to a Condominium Unit, a lien in favor of the Condominium Association for common expenses and other charges as specified in Section 9(g)(I) of the Condominium Act prior to the time of the recording of the Creditor Owner's notice of lien.

10.2 **No Diminution of Lien.** No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this Article 10) shall in any way affect or diminish any lien arising pursuant to this Article 10, and any lien which would have arisen against any property pursuant to this Article 10 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this Article 10) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title. Further, if at any time after the Condominium Property or a portion thereof has been submitted to the Illinois Condominium Act, any other Owner as a Creditor Owner has recorded a notice of lien under Section 10.1 against a Condominium Unit which lien has not been foreclosed, released or satisfied in full, and if such Condominium Unit is thereafter sold, then provided such Creditor Owner has notified the Condominium Association of the recordation of such notice of liens, such Creditor Owner shall be entitled to receive from the proceeds of the sale of such Condominium Unit an amount equal to the proceeds from the sale of such Condominium Unit minus any amount paid to satisfy the Prior Lien on such Condominium Unit, but in no event more than the product of the unpaid Default Amount multiplied by such Condominium Unit's percentage interest in the common

elements in the condominium as shown in the Condominium Declaration. Upon payment of such amount, the Creditor Owner shall provide a partial release of its lien for such Condominium Unit in accordance with Section 20.13(A). A Creditor Owner shall notify the Condominium Association of the recordation, foreclosure, release or satisfaction of liens against the Condominium Units. The Condominium Association shall notify the other Owners in advance of any sale of a Condominium Unit against which a lien is known to the Condominium Association to exist. Following any such sale, the Creditor Owner shall continue to have (x) a lien on such Condominium Unit and (y) the rights with respect to the proceeds of any subsequent sales of such Condominium Unit, as provided in this Article 10, to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Condominium Unit, which lien shall be subordinate to any Prior Lien on such Condominium Unit.

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

10A Interest Rate. Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due under until this Agreement paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by Bank One, N.A. at Chicago, Illinois or any successor as its corporate base, prime or reference rate of interest or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a corporate base, prime or reference rate of interest is not announced or is not available, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

10.5 Cumulative Remedies. Subject to the limitations set forth in Section 10.7, the rights and remedies of an Owner provided for in this Article 10 or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Agreement. The exercise by such Owner of any right or remedy to which it is entitled under this Agreement shall not preclude or restrict the exercise of any other right or remedy provided under this Agreement. The lien rights granted under Section 10.1 shall not preclude the filing of a lien under the Mechanics' Lien Act with respect to the Creditor Owner's performance pursuant to Articles 4 and 5 of this Agreement, as permitted by Section 20.14 of this Agreement.

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

lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

10.7 Period of Limitation. Subject to Section 18.2(f) of the Condominium Act, actions to enforce any right, claim or lien under this Agreement shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute.

10.8 Attorneys' Fees. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Agreement.

ARTICLE 11

ARBITRATION

All questions, differences, disputes, claims or controversies arising among or between Owners under this Agreement:

(A) constituting a monetary claim involving an amount as to anyone claim not exceeding \$100,000.00 (in 2000 Equivalent Dollars); or

(B) expressly made an Arbitrable Dispute or subject to arbitration under this Article 11 by the terms of this Agreement; or

(C) involving any of the following matters:

- (i) selection of an insurance company or apportionment of insurance premiums under Section 8.2;
- (ii) appointment of a contractor or contractors pursuant to Sections 9.4 or 13.4;
- (iii) replacement of the Architect pursuant to Section 18.1;
- (iv) other failure to agree on a matter described in Sections 2.6, 3.6 or 17.1 which this Agreement expressly requires the Owners to jointly decide or agree upon; or
- (v) disputes arising generally under Articles 5, 7, 8, 9 or 14.

which (with respect to any of such matters) shall be not resolved within sixty (60) days after arising (or such other shorter or longer time period expressly provided in this Agreement), shall be

submitted for arbitration to one (1) arbitrator at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules. Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within seven (7) business days, and proceedings shall commence within five (5) business days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under clauses (C)(i), (ii) or (iii) of this Article 11, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrator shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners. In the case of any other matter upon which the Parties fail to agree and which this Agreement expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrator shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of the issue. Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Agreement expressly governing the subject of the dispute, except in those instances where the arbitrator is required to select an individual, company or entity from those selected by the Owners and none meets such standards, terms or conditions. Arbitration may be initiated by any Owner. The Owner initiating arbitration shall **notify** the Mortgagees of the filing of a claim and demand in arbitration within five (5) days after filing such claim and demand. Owners may not seek injunctive relief in the arbitration. The fees and costs of any arbitration (including filing fees, arbitrators' fees and expenses, and court reporters' fees and transcript fees, but excluding witness fees and attorneys' fees) shall be borne equally by the Owners involved in the arbitration; provided that the arbitrator may include in its award any of the fees and costs of arbitration. Any award of the arbitrator shall be final and binding upon the Owners and judgment on such award shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 10.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes which are not easily divisible, the dispute shall not be submitted to arbitration. The Owners reserve and may exercise all rights and remedies available at law or in equity with respect to questions, differences, disputes, claims and controversies not required to be arbitrated pursuant to this Article II.

ARTICLE 12

UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in the greater Chicago area, war or national defense preemptions, acts of God, energy shortages or similar causes

beyond the reasonable control of such Owner applicable to projects generally in the greater Chicago area (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. However, if non-performance is due to an Unavoidable Delay which does not affect another Owner's self-help remedy which otherwise may be exercised for such non-performance, then notwithstanding such Unavoidable Delay such other Owner shall still be entitled to such remedy with respect to those obligations to have been performed by the Owner unable to perform (hereinafter in this Article 12 the "Non-Performing Owner") which are the subject of Unavoidable Delay. The Non-Performing Owner shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE 13

CONDEMNATION

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

13.2 **Payment of Award to Depository: Temporary Taking Awards.** All Awards resulting from the taking of all or any part of the Property or Project Site, other than damages resulting from a taking of the temporary use of space, shall be paid to the Depository by the Owners regardless of the Owner who received the Award and disbursed by the Depository as provided in this Article 13. In the event of a taking of a temporary use of any space, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Project Site.

13.3 **Taking of Only One Parcel.** In the event of (A) a taking (other than a temporary taking) of a part of the 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 13.6, the Owner of the portion of the Property in which the taking occurred shall repair and restore the remainder of its portion of the Property or 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 Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of such repair and restoration

in accordance with the provisions of Article 17 and to retain any excess not required for such repair and restoration; provided, however, that the right of any particular Owner to receive a portion of such excess, if **any**, shall be subject to the provisions of Section 20.12. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration adversely and materially affecting an Easement in favor of any other Owner or Owners or services to be furnished to the other Owner under Article 5, then (i) the Creditor Owners 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 ten (10) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then the Creditor Owners may perform such repair and restoration and may take all appropriate steps to carry out such repair and restoration; or (ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) the Creditor Owners may immediately perform such repair or restoration and may take all appropriate steps to carry out such repair and restoration. In performing such repair and restoration, the Creditor Owners shall, in accordance with Article 17, be entitled to withdraw any Award and any other monies held by the Depositary as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owners in excess of the Award and other monies. Repair and restoration under this Section 13.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owners' consent if it would not otherwise be required under Article 14 and Section 14.1 (E)(iii) shall not apply.

13.4 Repair and Restoration by All Owners. In the event of a taking other than (A) a temporary taking described in Section 13.2, (B) a taking described in Section 13.3, or (C) a taking of all or substantially all of the Property or Project Site, then, subject to the provisions of Section 13.6, the Owners shall cooperate to repair and restore the remainder of the Property in accordance with plans and specifications (hereinafter described) jointly approved by the Involved Owners (hereinafter defined) and their Mortgagees. Such **repair** and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of all of the Owners by a contractor or contractors jointly selected by the Owners whose portion of the Property ("Involved Owners") (subject to the approval of their Mortgagees if the approximate cost of repair and restoration is greater than \$500,000.00 (in 2000 Equivalent Dollars», except as hereinafter provided. In the event the Involved Owners (with approval of their Mortgagees, when required) fail to agree upon the selection of a contractor or contractors, the Involved Owners shall request the advice of the Architect. If, after receiving the Architect's advice, the Involved Owners (with approval of their Mortgagees, when required) cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in one Owner's portion of the Property, then the approval of the other Owners (and approval by such Owners' Mortgagees) shall not be required with respect to the plans and specifications which do not materially affect the other Owners and which do not constitute Alterations, nor shall the consent of the other Owners (and approval by such Owners' Mortgagees) be required with respect to the selection of a contractor. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the

Involved Owners shall otherwise agree in accordance with instructions given by all Involved Owners, all subject to the approval of their Mortgagees. Such plans and specifications shall provide for repair and restoration of the remainder of the Property to form an architectural and functional whole with such changes in the Property as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement are extinguished or materially impaired, then changes shall be made to provide for easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 2 and 3 and for the furnishing of services under Article 5. The Architect will furnish to each of the Owners (but only if and to the extent such Owner's approval is required) and the Mortgagees a set of such plans and specifications for their approval. Unless the Involved Owners otherwise agree (subject to the approval of their Mortgagees, if the approximate cost of the repair and restoration is greater than \$500,000.00 (in 2000 Equivalent Dollars)), the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owner or Owners in whose portion of the Project Site such repair and restoration is being performed and the Mortgagees, as such repair and restoration progresses, to disburse, in accordance with Article 17, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

13.5 Excess Award. The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6). Any excess of the Award over the cost of repair and restoration then shall be allocated to an Owner in the same ratio as the apportionment of the Award to parties with an interest in such Owner's portion of the Project Site in any judicial or administrative proceedings in connection with the taking bears to the apportionment of the Award to the parties with an interest in the other Owners' portion of the Project Site; provided, however, that the right of the Owners to receive any such excess shall be subject to the provisions of Section 20.12. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each Owner of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

13.6 Demolition. If, as a result of a taking (other than a temporary taking or a taking described in Section 13.7), any Owner reasonably determines that its portion of the Property no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore its portion of the Property as may be required by Sections 13.3 and 13.4. However, in such case, the Owner not repairing or restoring shall demolish, repair or restore its portion of the Property to the extent, if any, as may be necessary to provide structural support for the other portions of the Property. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 13.4 are applicable.

13.7 Allocation of Award. In the event of a taking of all or substantially all of the Property or Project Site, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in colUlection with the taking and paid to the Owners in accordance with that apportionment; provided, however, that the right of the Owners to receive any award and payment shall be subject to the provisions of Section 20.12.

13.8 Condominium. If at any time any portion of the Condominium Property is submitted to the Condominium Act, then, with respect to the Condominium Property only, the provisions of this Article 13 are subject to the applicable provisions of the Condominium Act.

ARTICLE 14

ALTERATIONS

14.1 Permitted Alterations.

(A) An Owner (hereinafter in this Article 14, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article 14, "Alterations") to such Altering Owner's portion of the Property, provided that such Alterations comply with all of the provisions of this Article 14. Alterations shall include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 14. Subject to the provisions of Section 5.5, replacement of Facilities may be made by an Altering Owner without consent of other Owner; provided, however, an Altering Owner must replace the Facilities with Facilities substantially equivalent or better, providing substantially the same quality of service or better. The provisions of this Article 14 governing Alterations do not negate or diminish other provisions of this Agreement having to do with additions, improvements or alterations expressly required or permitted in Articles 4, 6, 9 and 13, which are governed by such provisions unless also designated in such Articles as "Alterations" to be governed by this Article 14.

(B) Alterations shall not be made without the prior written consent of the other Owners if such Alterations will:

- (i) during their performance or upon their completion, unreasonably diminish the benefits afforded to such other Owners by an Easement or unreasonably interrupt such other Owners' use or enjoyment of any Easement;
- (ii) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports that serve any Improvements other than the Improvements of the Altering Owner; or

- (iii) during their performance or upon their completion, degrade or diminish services to the other Owner under Article 5.

Notwithstanding the foregoing, no consent of the Condominium Property Owner shall be required for any Alterations performed in accordance with the provisions of Section 3.9(B).

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of any other Owner) the consent of other Owners as expressly provided in this Article 14, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owners a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 14.1. An Altering Owner may also at any time request confirmation from the other Owners that their consent is not required with respect to proposed Alterations if such Alterations do not require their consent, and such confirmation shall be given within ten (10) business days after the request is made. A failure to respond by the expiration of such ten (10) business day period shall be deemed a confirmation. If such other Owners consent to such Alterations or do not respond within thirty (30) days after receipt of such plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with such plans and specifications. The Owners whose consent is requested will not unreasonably delay their response, having in mind the scope and complexity of the proposed Alterations, and in any event shall respond to the Altering Owner within thirty (30) days after receipt from the Altering Owner of such plans and specifications showing proposed Alterations. If, in the good faith opinion of the other Owners, the Altering Owner has violated or will violate the provisions of Section 14.1(A) or (B), then such Owners (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 14.1 (A) or (B), and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 14.1 (A) or (B), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) If any matter arises between any two (2) or more Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 14.1 (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 14.1(A) or (B).

(E) The Owners, in making Alterations, shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, including, without limitation, the Village Building Code, and (iii) comply with all of the applicable provisions of this Agreement. Each Owner shall, to the extent reasonably practicable, make

Alterations within its portions of the Property in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would disturb an occupant or occupants of the other portions of the Property, but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances, which shall not include normal construction activities in a mixed-use development. An Altering Owner may perform work during any hOUTS permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance and who pays all costs associated with work at times other than normal business hOUTS, including overtime and delay costs, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours.

14.2 Property Permits. 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 Village or other government agency having jurisdiction requires joinder of the other Owners. An Altering Owner shall send copies of any building permits to another Owner at such other Owner's request. If joinder by the other Owners not making Alterations is so required, such Owners shall cooperate (at the expense of the Altering Owner) in executing such application, permit 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 Owners' execution of the application, permit or other instrument. If an Owner fails to execute such application, permit or instruments when required to do so, the Altering Owner is hereby irrevocably appointed attorney-in-fact of such other Owner (such power of attorney being coupled with an interest) to execute such application, permit or instruments on behalf of such other Owner.

14.3 No Liens Against Other Portions of the Property. An Owner performing any work required, provided for or permitted under this Agreement shall include in any construction contract a provision pursuant to which the contractor recognizes the separate ownership of the portions of the Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Lien Act shall only be enforceable against the portion of the Property or Project Site owned by the Altering Owner.

ARTICLE 15

ESTOPPEL CERTIFICATES

15.1 Estoppel Certificates. Each Owner shall, from time to time, within ten (10) days after written request from any other Owner, any prospective transferee of any other Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 20.12(B), execute, acknowledge and deliver to the requesting party, a certificate ("Estoppel Certificate") stating:

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

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

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

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

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

(F) 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;

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

(H) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 5, 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 of this Agreement, but has not yet charged to such requesting Owner, and if there is any such work, specifying the nature and extent of such work and the projected amount to be paid by the requesting Owner;

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

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

At any time a portion of the Condominium Property has been submitted to and remains subject to the Condominium Act, Estoppel Certificates may only be requested by the Condominium

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Association and not by Condominium Unit Owner (except that in connection with a sale or financing of a Condominium Unit or other transaction involving a Condominium Unit, the Condominium Association may request an Estoppel Certificate on behalf of a Condominium Unit Owner and such Estoppel Certificate need only include the items under (B) and (E) [and in the case of (E), as to the Condominium Unit only]); and Estoppel Certificates requested of the Condominium Property Owner as to that portion of the Condominium Property submitted to the Condominium Act shall be given by the Condominium Association and shall bind all Condominium Unit Owners. If the requesting party is a Mortgagee or prospective Mortgagee, the Owner on whose property it holds or intends to hold a Mortgage will be deemed the "requesting Owner." If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the "requesting Owner."

ARTICLE 16

DEPOSITARY

16.1 Appointment of Depositary. A depositary (the "Depositary") shall be appointed as provided in this Section 16.1 to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Agreement. The initial Depositary and any subsequent Depositary shall be appointed by the Owners jointly, and shall be a bank or trust company with substantial assets and with principal offices in the greater Chicago, Illinois area. The Depositary shall be entitled to receive from each of the Owners such Owner's equitable share of the Depositary's reasonable fees and expenses for acting as Depositary, and may retain such fees and expenses, free of trust, from monies held by it. Any Depositary appointed to act under this Agreement shall execute an agreement with the Owners accepting such appointment in substantially the form attached hereto as Exhibit C.

16.2 Liability of Depositary. The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation Award or Awards unless the Depositary shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to insurance proceeds or condemnation Award or Awards, then that Owner may authorize the Depositary to so proceed. In addition, the Depositary may rely conclusively on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 17.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

16.3 Interest on Deposited Funds. The Depositary shall have no obligation to pay interest on any monies held by it unless the Depositary shall have given an express written undertaking to do so; or, unless all of the Owners for whose benefit monies are being held have

requested, and the Mortgagees of the Owners have concurred, in connection with a specified deposit offunds with the Depository, **that** the Depository undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and the Owners, then the Depository, within thirty (30) days after request from any of the Owners given to the Depository and to the other Owners, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within one (1) year from the date of purchase, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Agreement. Any interest paid or received by the Depository 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 held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Agreement shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes provided for in this Agreement.

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

16.5 Resignation of De osita . The Depository may resign upon the delivery of not less than sixty (60) days' prior written notice to all of the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall appoint a substitute which qualifies under Section 16.1, and the Depository shall transfer all funds, together with copies of all records, held by it as Depository to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within thirty (30) days, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, which qualifies under Section 16.1.

ARTICLE 17DISBURSEMENTS OF
FUNDS BY DEPOSITARY17.1 Disbursement Requests.

(A) Each request by the Architect acting pursuant to the provisions of this Agreement for disbursement of insurance proceeds, any Award or other funds for application to the cost of repair, restoration or demolition (the "work") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners and their Mortgagees, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the work:

(1) That the amount requested either (a) has been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of all of the Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is properly 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 paid or due to each named person and shall state the progress of the work up to the date of the certificate and any other information required by the Mechanics' Lien Act and any title insurer affording coverage against mechanics' liens;

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

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

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

(B) Upon:

(i) compliance with the provisions of Section 17.I(A), and

(ii) receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Lien 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 statements, and

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

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

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

ARTICLE 18

ARCHITECT

18.1 Appointment of Architect. 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) experienced in the design and operation of developments similar to the Property to serve under and

pursuant to the terms and provisions of this Agreement (the "Architect"). The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of the American Institute of Architects' then-standard form agreement between owners and architects for designated services with such modifications as are mutually acceptable to the Architect and the Owners, which agreement shall incorporate those services and modifications necessary to implement the provisions of this Agreement and shall provide that the Owners may cause the then-serving Architect to be replaced without cause upon no more than thirty (30) days' prior written notice. The Owners jointly may replace the Architect for any reason. The Mortgagees shall have the right to approve the appointment of the Architect in the first instance or any replacement of the Architect. Any Owner also may cause any Architect to be replaced, and the other Owners shall be deemed to have consented to such replacement, if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties diligently or competently. If all Owners do not jointly desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve notice upon the other Owners and the Mortgagees requesting the removal of the then-serving Architect, which notice shall set forth with **specificity** the respect or respects in which the Architect shall have failed to perform diligently or competently. If, in the opinion of the Owners or Mortgagees 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 18.1, an Owner or Mortgagee receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners and Mortgagees of its objection in writing within fifteen (15) days after receipt of such notice from the requesting 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 (subject to the approval of their Mortgagees), then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but that proceeding shall not serve any purpose other than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners and the Mortgagees.

18.2 Notice of Submission of Dispute to Architect. In any instance when the Architect serving pursuant to Section 18.1 is authorized by this Agreement to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit such dispute or matter to the Architect. The Owner submitting such dispute or matter to the Architect shall simultaneously give written notice of the submission of such dispute or matter to the other Owner or Owners involved in such dispute or matter and to the Mortgagees. 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 or the Mortgagees, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it under this Agreement, or for any other action taken by it under this Agreement, if done in good faith and in the absence of negligence. No advice given by the Architect under this Agreement shall be binding on the Owners, and an Owner may accept or reject such advice.

18.3 Replacement of Architect. If any new Architect is appointed, and if the Architect being replaced is then engaged in the resolution of any dispute or matter previously submitted, or

if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required under or pursuant to this Agreement, **then, if** the Owners so choose, subject to the consent of the Mortgagees, the Architect being replaced shall continue to act as Architect with respect, and only with **respect**, to such pending dispute or matter or the completion of such preparation of plans and specifications or supervision of any such work.

18.4 Architects Fees. The Architect shall be paid a reasonable fee for any services rendered under this Agreement and shall be reimbursed for reasonable and necessary expenses incurred in connection with such services, and each Owner involved in the work shall pay its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Agreement, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Property or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such 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 Agreement 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 from the Architect, then any other Owner may pay such share and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment.

ARTICLE 19

NOTICES AND APPROVALS

19.1 Notice to Parties. Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "notice") that an Owner is required, permitted or desires to give or make or communicate to any other Owner shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Owners at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with a recognized overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail.

If to the Condominium
Property Owner:

Campbell Development, L.L.C.
7458 North Harlem Avenue
Chicago, Illinois 60631
Attn: General Counsel
Fax No. (773) 775-4586

With a copy to: Piper Marbury Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601-1293
Attn: Jeffrey S. Arnold
Fax No. (312) 236-7516

If to the Commercial
Property Owner: Beta Properties, LLC
7458 North Harlem Avenue
Chicago, Illinois 60631
Attn: General Counsel
Fax No. (773) 775-4586

With a copy to: Piper Marbury Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601-1293
Attn: Jeffrey S. Arnold
Fax No. (312) 236-7516

Any Owner may designate a different address or additional addresses from time to time, provided such Owner has given at least ten (10) days' prior notice of such change of address. Failure to give notices to an Owner's counsel identified above shall not render notice to such Owner or Mortgagee invalid or ineffective. If any Owner shall cease to be the "Owner" of its respective portion of the Property, and the succeeding Owner of that portion of the Property shall fail to give a notice of change of address, then notices may be sent to anyone of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's portion of the Property as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or the Village of Arlington Heights department or agency having jurisdiction over Village of Arlington Heights addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Property in question. Notwithstanding anything to the contrary contained in this Agreement, all notices relating to (i) defaults or claims of default under this Agreement or (ii) change of notice address.

19.2 Multiple Owners. If at any time the interest or estate of the Condominium Property Owner or the Commercial Property Owner shall be owned by more than one Person (hereinafter collectively referred to as "multiple owners"), the multiple owners shall give to the other Owners a written notice, executed and acknowledged by all of the multiple owners, in a form proper for recording, which shall (a) designate one Person, having an address in the State of Illinois to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners, and (b) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations under this Agreement. At any time the Condominium Property or any portion thereof has been submitted to and remains subject to the Condominium Act, the Condominium Association is hereby designated as agent for all of the Condominium Unit Owners for the purposes of clause

(a) and (b) of the immediately preceding sentence. Thereafter, until such designation is revoked by written notice given by all of the multiple owners of their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Article 19 collectively referred to as "legal process"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple owners shall fail to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked and a new agent is not designated, then any notice or legal process may be given to, or served upon, anyone of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, anyone of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process. The term "Multiple Owners" as used in this Section 19.2 shall not include Condominium Unit Owners with respect to any portion of the Property that is subject to the Condominium Act; provided, however, that notice to or from Condominium Unit Owners shall be governed by Section 20.12(A).

ARTICLE 20

GENERAL

20.1 Cooperation of Owners. In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Property and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Property. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the date of this Agreement, each Owner shall furnish, execute and acknowledge, without charge (except as otherwise provided in this Agreement) such other instruments, documents, materials and information as another Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated by this Agreement, but only so long as any such request does not restrict or abridge the benefits granted the other Owner under this Agreement. Except as otherwise expressly provided in this Agreement, whenever the consent, approval or agreement of an Owner is required or requested pursuant to this Agreement, such consent, approval or agreement shall not be unreasonably withheld, delayed or conditioned.

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

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

20.4 Amendments to Agreement. Except as otherwise provided in this Agreement, this Agreement may be amended or terminated only by an instrument signed by all of the then Owners, and consented to by the Mortgagees. As to the Condominium Property, consent to or execution by the mortgagees of any Condominium Unit (other than a Mortgagee under a mortgage initially placed on the entire Condominium Property or all Condominium Units) shall not be required, and any **such** Condominium Unit mortgages shall nevertheless be subordinate to such amendments. Any amendment to or termination of this Agreement shall be recorded with the Recorder. Any amendment which affects only the rights and obligations of some (but less than all) of the Owners shall require execution only by the affected Owners. Notwithstanding the foregoing, each Owner may change and supplement the Plans applicable to such Owner's portion of the Property if such change or supplement does not affect any other Owner's portion of the Property, which change or supplement shall be deemed not to be an amendment of this Agreement; provided, however, such Owner shall promptly **notify** the other Owners of such change or supplement. Any proposed change or supplement to any of the Plans which does or would affect any other Owner's portion of the Property shall be considered an amendment to this Agreement which shall be subject to the provisions of this Section 20.4 governing amendments.

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

20.6 Construction of Agreement. The provisions of this Agreement shall be construed to the end that the Property shall remain a first-class residential and commercial mixed-use property.

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

20.8 Applicable Laws. The Parties acknowledge that this Agreement and all other instruments in connection with this Agreement have been negotiated, executed and delivered in the County of Cook and State of Illinois. This Agreement and such other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including without limitation, matters affecting title to all real property described in this Agreement, and, to the extent applicable to the Condominium Property, the Condominium Act.

20.9 Name of Project. The project to be developed on the Property is currently named "Campbell Courte." Each of the Owners shall have a non-exclusive right to use the name "Campbell Courte" as the name of such Owner's portion of the Property. Each of the Owners may change the name of their respective portions of the Property from time to time, but only with the prior written approval of the other Owner and only if the Owner desiring to change its Property's name reimburses the other Owner for its costs resulting from such name change.

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

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

20.12 Notice to Mortgagees; Rights of Mortgagee.

(A) The term "Mortgage" as used in this Agreement shall mean any mortgage (or any trust deed) given primarily to secure the repayment of money owed by the mortgagor and constituting a lien on all or a substantial portion of the real property encumbered by such mortgage); provided, however, no mortgage or trust deed on an individual Condominium Unit (other than a mortgage initially placed on the entire Condominium Property or all Condominium Units) shall be included within the definition of "Mortgage" unless specifically stated to the contrary. The term "Mortgagee" as used in this Agreement shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed). The term "First Mortgage" shall mean a Mortgage that is superior to all other consensual liens and encumbrances.

(B) If a Mortgagee shall have served on all of the Owners, by personal delivery or by United States registered or certified mail, return receipt requested, postage prepaid, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one Owner to the others at the same time as and whenever such notice shall be given by one Owner to the others, at the address last furnished by such Mortgagee. After receipt of such notice from a Mortgagee, no notice thereafter given by any Owner to the others shall be deemed to have been given unless and until a copy of such notice shall have been given to the Mortgagee. If a Mortgagee so provides or otherwise requires in a notice is given by the Mortgagee in accordance with this Section 20.12(B), then:

(1) the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, upon notice from a Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository in accordance with the provisions of this Agreement; and

(2) if an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its Mortgagee and such appointment and action shall be recognized in all respects by the other Owners.

(A) Notwithstanding anything to the contrary specified in this Agreement (including this Section 20.12), no Owner need give any notice to more than one Mortgagee per Parcel, or to any mortgagee or trustee under a mortgage or trust deed other than a "Mortgage" as defined in Section 20.12(A).

20.13 Condominium Association and Condominium Unit Owner Liability; Condominium Declaration.

(A) All rights, Easements and benefits under this Agreement appurtenant to or enjoyed by the Condominium Property shall be exercised by the Condominium Association on behalf of the Condominium Unit Owners except for Easements which by their nature are exercisable only by Condominium Unit Owners individually. Any action to enforce rights, obligations, Easements, burdens and benefits under this Agreement including, but not limited to, pursuant to Section 9.3, on behalf of the Condominium Unit Owners or the Condominium Association shall be taken on behalf of all Condominium Unit Owners and the Condominium Association solely by the Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium Property. All obligations and duties of the Condominium Property Owner under this Agreement shall be the obligations and duties jointly and severally of both the Condominium Association and the Condominium Unit Owners collectively so long as the Condominium Property is subject to the Condominium Act; provided, however, that no individual Condominium Unit Owner (or the holder of any mortgage on such Condominium Unit Owner's Condominium Unit) shall be liable for any obligation of the Condominium Property Owner in excess of a percentage of such liability equal to the percentage interest in the common elements in the condominium attributable to such Condominium Unit as shown in the Condominium Declaration. In any case, such liability of a Condominium Unit Owner shall be subject to the provisions of Section 21.1. Upon payment of such amount for which a Condominium Unit Owner may be liable, (i) any lien arising against such Condominium Unit Owner's Condominium Unit on account of such claim shall be deemed released against such Condominium Unit Owner's Condominium Unit without further act or deed by any such Condominium Unit Owner, and (ii) upon the written request of such Condominium Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Condominium Unit Owner an instrument evidencing the release of such lien, but only with respect to such Condominium Unit

Owner's Condominium Unit. When a Condominium Unit is owned by more than one "person" (as defined "in the Condominium Act) the liability of each such person for any claim against the Condominium Unit shall be joint and several. Notices under Section 19.1 from a Condominium Unit Owner or Condominium Unit Owners shall be given by the Condominium Association.

(B) The terms of the Condominium Declaration shall be consistent with the provisions of this Agreement and no amendments shall be made to the Condominium Declaration which shall conflict with the terms of this Agreement. The Condominium Declaration shall provide, at a minimum, that the board of directors of the Condominium Association may act, to the extent allowed by the Condominium Act, on behalf of the Condominium Unit Owners in complying with the provisions of and performing obligations under this Agreement without Condominium Unit Owner authorization, that such actions shall bind all of the board of directors of the Condominium Unit Owners, and that the board of directors of the Condominium Association shall assess all Condominium Unit Owners a sufficient level of assessments to satisfy the obligations of the Condominium Property Owner under this Agreement.

20.14 Waiver of Mechanics' Liens by Owners. To the maximum extent permitted by law, the Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of, or right to, liens, which such Owners may have under the Mechanics' Lien Act against, or with respect to the Property or improvements owned by any other Owner or any part thereof, or with respect to the estate or interest of any person in the Property or improvements owned by any other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery furnished or to be furnished pursuant to this Agreement, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or subsubcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to Article 4 or Article 5. The Parties agree that the legal effect of this Agreement is that no mechanics' lien or claim may be filed or maintained by any Owner under the Mechanics' Lien Act with respect to that portion of the Property or improvements owned by any other Owner, except as set forth in Article 4 or Article 5 of this Agreement. The provisions of this Section 20.14 are not intended to waive any lien created under Article 10.

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

ARTICLE 21LIMITATION OF LIABILITY

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

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

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

CONDOMINIUM PROPERTY OWNER:

CAMPBELL DEVELOPMENT, L.L.C.
an Illinois limited liability company

By: Norwood Builders Inc., an Illinois corporation & manager

By: Bruce J. Adreani

Name: Bruce J. Adreani

Its: President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Stephen S. Messutta, a Notary Public in and for the County and State aforesaid, do hereby certify that Bruce J. Adreani as President Manager of Campbell Development, L.L.C., an Illinois limited liability company (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing Agreement as such Manager's President, appeared before me this day in person and acknowledged that he signed and delivered the Agreement as his own free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day Of July, 2000.

[Signature]

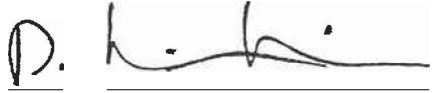
Notary Public

My Commission Expires: 3/05/2003



COMMERCIAL PROPERTY OWNER:


BETA PROPERTIES, LLC,
an Illinois limited liability company
By: BETA TRUST, Sole Member

By: 
Name: D. Michael Miller
Its: Sole Trustee of Beta Trust
Sole Member

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Stephen S. Messutta, a Notary Public in and for the County and State aforesaid, do hereby certify that D. Michael Miller, as Trustee of Member of Beta Properties, LLC, an Illinois limited liability company (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing Agreement as such Trustee, appeared before me this day in person and acknowledged that he signed and delivered the Agreement as his own free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of July, 2000.


Notary Public

My Commission Expires: 3/5/2003



CONSENT OF MORTGAGEE

PARKWAY BANK & TRUST CO., holder of the mortgage dated June 15, 1999 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on June 22, 1999, as Document No. 99600283, hereby consents to the execution and recording of the attached Easement and Operating Agreement and agrees that its mortgage is subject and subordinate thereto.

IN WITNESS WHEREOF, Monica Kucmierz has caused this Consent to be signed by its duly authorized officers on its behalf this 25 day of July, 2000.

PARKWAY BANK & TRUST CO.

By: Marianne Y. Wagener
Title: Vice President

By: [Signature]
Title: Asst. Vice President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Monica Kucmierz, a Notary Public in and for the County and State aforesaid, do hereby certify that Marianne Wagener and David F. Hyde III, Asst Vice President and Asst Vice President respectively, of Parkway Bank, & Trust Co., a financial institution, as such Vice President and Asst Vice President, appeared before me this day in person and acknowledged that they signed, sealed and delivered the Consent as their free and voluntary act, and as the free and voluntary act of such Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25 day of July, 2000.

Monica Kucmierz
Notary Public

My Commission Expires, 04/29/03



EXHIBIT 'A'
to Easement and Operating Agreement for
Campbell Courte at Village Green Condominiums and The Shops at Campbell Courte (J) 577252
CONDOMINIUM PARCEL LEGAL DESCRIPTION

A Parcel of Land Falling in the Following Described Tract:

That part of the West Half of the Southwest Quarter of Section 29 and the North Half of the Southeast Quarter of Southeast Quarter of Section 30, Township 42 North, Range 12, East of the Third Principal Meridian, described as follows: Beginning at the Southwest corner of Lot 5 in Block 24 in the Town of Dunton, being a subdivision of the West Half of the Southwest Quarter of said Section 29; thence North **89°50'10"** West along the South line of Block 20 in Miner's Addition to Dunton, being a subdivision of the North Half of the Southeast Quarter of the Southeast Quarter of said Section 30, 132.00 feet to the Southwest corner of Lot 2 in said Block 20; thence North **00°16'47"** East 124.06 feet, thence South **89°29'47"** East 131.98 feet to the West line of the Southwest Quarter of said Section 29; thence South **89°29'47"** East 38.84 feet; thence North **00°38'34"** East 141.79 feet to the North line of said Block 24; thence South **89°21'53"** East along the North line of said Block 24, 108.88 feet; thence South **00°38'34"** West 265.17 feet to the South line of said Block 24; thence North **89°21'26"** West along the South line of said Block 24, 146.91 feet to the point of beginning.

EXCEPT from said property taken as a tract that part lying above a horizontal plane of 693.73 feet USGS and below a horizontal plane of 709.25 feet USGS and falling within the boundaries projected vertically of the following described property: Commencing at the Southeast corner of said tract; thence North **00°38'34"** East along the East line of said tract 7.52 feet; thence North **89°21'26"** West at right angles thereto **28.59** feet to the point of beginning; thence North at right angles thereto 35.10 feet; thence West at right angles thereto 13.58 feet; thence North at right angles thereto 15.62 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 2.01 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 8.40 feet; thence East at right angles thereto 3.05 feet; thence North at right angles thereto 16.41 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 2.05 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 16.12 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 0.33 feet; thence West at right angles thereto 11.80 feet; thence South at right angles thereto 0.35 feet; thence West at right angles thereto 2.0 feet; thence North at right angles thereto 0.35 feet; thence West at right angles thereto 31.80 feet; thence South at right angles thereto 11.58 feet; thence East at right angles thereto 8.00 feet; thence South at right angles thereto 34.20 feet; thence East at right angles thereto 0.49 feet; thence South at right angles thereto 1.01 feet; thence West at right angles thereto 2.01 feet; thence North at right angles thereto 0.19 feet; thence West at right angles thereto 9.40 feet; thence North at right angles thereto 28.67 feet; thence West at right angles thereto 5.06 feet; thence North at right angles thereto 17.93 feet; thence West at right angles thereto 23.14 feet; thence South at right angles thereto 96.50 feet; thence East at right angles thereto 24.22 feet; thence North at right angles thereto 1.01 feet; thence East at right angles thereto 0.68 feet; thence South at right angles thereto **6.50** feet; thence East at right angles thereto 0.35 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 12.09 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.01 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 23.23 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.02 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 11.86 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 8.16 feet; thence East at right angles thereto 1.02 feet; thence South at right angles thereto 2.57 feet; thence East at right angles thereto 9.66 feet to the point of beginning; and

EXCEPT from said property taken as a tract that part lying above a horizontal plane of 696.16 feet USGS and below a horizontal plane of 709.25 feet USGS and falling within the boundaries projected vertically of the following described property: Commencing at the Southeast corner of said tract; thence North **89°21'26"** West along the South line thereof 117.13 feet; thence North **00°38'34"** East at right angles thereto 7.53 feet to the point of beginning; thence West at right angles thereto 19.17 feet; thence North at right angles thereto 5.60 feet; thence West at right angles thereto 10.35 feet; thence North at right angles thereto 35.78 feet; thence East at right angles thereto 0.50 feet; thence North at right angles thereto 1.04 feet; thence West at right angles thereto 1.51 feet; thence South at right angles thereto 0.05 feet; thence West at right angles thereto 8.93 feet; thence North at right angles thereto 53.76 feet; thence East at right angles thereto 8.40 feet; thence South at right angles thereto 0.50 feet; thence East at right angles thereto 2.0 feet; thence North at right angles thereto 0.55 feet; thence East at right angles thereto 29.0 feet; thence South at right angles thereto 96.14 feet to the point of beginning; and

EXCEPT from said property taken as a tract that part lying above a horizontal plane of 696.08 feet USGS lying and

EXHmrr'A'
to **Easement** and **Operating** Agreement for
Campbell Courte at Village Green Condominiums and The Shops at Campbell Courte
CONDOMINIDM PARCEL LEGAL DESCRIPTION
Continued

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below a horizontal plane of 709.25 feet USGS and falling within the boundaries projected vertically of the following **described** property: Commencing at the Southwest corner of said tract; thence South 89°50'10" east along the South line thereof 49.50 feet; thence North 00°09'50" East at right angles thereto 1.31 feet to the point of beginning; thence East at right angles thereto 1.29 feet; thence South at right angles thereto 0.33 feet; thence East at right angles thereto 10.51 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.03 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 12.13 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 6.19 feet; thence East at right angles thereto 0.70 feet; thence South at right angles thereto 0.70 feet; thence East at right angles thereto 24.34 feet; thence North at right angles thereto 90.78 feet; thence West at right angles thereto 29.35 feet; thence South at right angles thereto 40.74 feet; thence West at right angles thereto 7.54 feet; thence South at right angles thereto 0.26 feet; thence West at right angles thereto 2.0 feet; thence North at right angles thereto 1.03 feet; thence East at right angles thereto 0.50 feet; thence North at right angles thereto 0.81 feet; thence West at right angles thereto 12.34 feet; thence South at right angles thereto 57.0 feet to the point of **beginning**, ALL in Cook County, Illinois.

EXHIBIT 'B'

to Easement and Operating Agreement for
Campbell Courte at Village Green Condominiums and The Shops at Campbell Courte
COMMERCIAL PARCEL LEGAL DESCRIPTION

A Parcel of Land Falling in the Following Described Tract:

That part of the West Half of the Southwest Quarter of Section 29 and the North Half of the Southeast Quarter of Southeast Quarter of Section 30, Township 42 North, Range 12, East of the Third Principal Meridian, described as follows: Beginning at the Southwest corner of Lot 5 in Block 24 in the Town of Dunton, being a subdivision of the West Half of the Southwest Quarter of said Section 29; thence North 89°50'10" West along the South line of Block 20 in Miner's Addition to Dunton, being a subdivision of the North Half of the Southeast Quarter of the Southeast Quarter of said Section 30, 132.00 feet to the Southwest corner of Lot 2 in said Block 20; thence North 00°16'47" East 124.06 feet, thence South 89°29'47" East 131.98 feet to the West line of the Southwest Quarter of said Section 29; thence South 89°29'47" East 38.84 feet; thence North 00°38'34" East 141.79 feet to the North line of said Block 24; thence South 89°21'53" East along the North line of said Block 24, 108.88 feet; thence South 00°38'34" West 265.17 feet to the South line of said Block 24; thence North 89°21'26" West along the South line of said Block 24, 146.91 feet to the Point of Beginning,

Said Parcel being described as that part lying above a horizontal plane of 693.73 feet USGS and below a horizontal plane of 709.25 feet USGS and falling within the boundaries projected vertically of the following described property: Commencing at the Southeast corner of said tract; thence North 00°38'34" East along the East line of said tract 7.52 feet; thence North 89°21'26" West at right angles thereto 28.59 feet to the point of beginning; thence North at right angles thereto 35.10 feet; thence West at right angles thereto 13.58 feet; thence North at right angles thereto 15.62 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 2.01 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 8.40 feet; thence East at right angles thereto 3.05 feet; thence North at right angles thereto 16.41 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 2.05 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 16.12 feet; thence West at right angles thereto 0.35 feet; thence North at right angles thereto 0.33 feet; thence West at right angles thereto 11.80 feet; thence South at right angles thereto 0.35 feet; thence West at right angles thereto 2.0 feet; thence North at right angles thereto 0.35 feet; thence West at right angles thereto 31.80 feet; thence South at right angles thereto 11.58 feet; thence East at right angles thereto 8.00 feet; thence South at right angles thereto 34.20 feet; thence East at right angles thereto 0.49 feet; thence South at right angles thereto 1.01 feet; thence West at right angles thereto 2.01 feet; thence North at right angles thereto 0.19 feet; thence West at right angles thereto 9.40 feet; thence North at right angles thereto 28.67 feet; thence West at right angles thereto 5.06 feet; thence North at right angles thereto 17.93 feet; thence West at right angles thereto 23.14 feet; thence South at right angles thereto 96.50 feet; thence East at right angles thereto 24.22 feet; thence North at right angles thereto 1.01 feet; thence East at right angles thereto 0.68 feet; thence South at right angles thereto 6.50 feet; thence East at right angles thereto 0.35 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 12.09 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.01 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 23.23 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.02 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 11.86 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 8.16 feet; thence East at right angles thereto 1.02 feet; thence South at right angles thereto 2.57 feet; thence East at right angles thereto 9.66 feet to the point of beginning.

AND

A Parcel of Land Falling in the Following Described Tract:

That part of the West Half of the Southwest Quarter of Section 29 and the North Half of the Southeast Quarter of Southeast Quarter of Section 30, Township 42 North, Range 12, East of the Third Principal Meridian, described as follows: Beginning at the Southwest corner of Lot 5 in Block 24 in the Town of Dunton, being a subdivision of the West Half of the Southwest Quarter of said Section 29; thence North 89°50'10" West along the South line of Block 20 in Miner's Addition to Dunton, being a subdivision of the North Half of the Southeast Quarter of the Southeast Quarter of said Section 30, 132.00 feet to the Southwest corner of Lot 2 in said Block 20; thence North 00°16'47" East 124.06 feet, thence South 89°29'47" East 131.98 feet to the West line of the Southwest Quarter of said Section 29; thence South 89°29'47" East 38.84 feet; thence North 00°38'34" East 141.79 feet to the North line of said Block 24; thence South 89°21'53" East along the North line of said Block 24, 108.88 feet; thence South 00°38'34" West 265.17 feet to the South line of said Block 24; thence North 89°21'26" West along the South line of said Block 24, 146.91 feet to the Point of Beginning,

EXHIBIT 'B'
to Easement and Operating Agreement for
Campbell **Courte** at Village Green Condominiums and The Shops at Campbell Courte
COMMERCIAL PARCEL LEGAL DESCRIPTION
Continued

Said Parcel being described as that part lying above a horizontal plane of 696.16 feet USGS and below a horizontal plane of 709.25 feet USGS and falling **within** the boundaries projected vertically of the following described property: Commencing at the Southeast corner of said tract; thence North **89°21'26"** West along the South line thereof 117.13 feet; thence North 00°38'34" East at right angles thereto 7.53 feet to the point of beginning; thence West at right angles thereto 19.17 feet; thence North at right angles thereto 5.60 feet; thence West at right angles thereto 10.35 feet; thence North at right angles thereto 35.78 feet; thence East at right angles thereto 0.50 feet; thence North at right angles thereto 1.04 feet; thence West at right angles thereto 1.51 feet; thence South at right angles thereto 0.05 feet; thence West at right angles thereto 8.93 feet; thence North at right angles thereto 53.76 feet; thence East at right angles thereto 8.40 feet; thence South at right angles thereto 0.50 feet; thence East at right angles thereto 2.0 feet; thence North at right angles thereto 0.55 feet; thence East at right angles thereto 29.0 feet; thence South at right angles thereto 96.14 feet to the point of beginning.

AND

A Parcel of Land Falling in the Following Described Tract:

That part of the West Half of the Southwest Quarter of Section 29 and the North Half of the Southeast Quarter of Southeast Quarter of Section 30, Township 42 North, Range 12, East of the Third Principal Meridian, described as follows: Beginning at the Southwest corner of Lot 5 **in** Block 24 **in** the Town of Dunton, being a subdivision of the West Half of the Southwest Quarter of said Section 29; thence North 89°50'10" West along the South line of Block 20 **in** Miner's Addition to Dunton, being a subdivision of the North Half of the Southeast Quarter of the Southeast Quarter of said Section 30, 132.00 feet to the Southwest corner of Lot 2 in said Block 20; thence North 00°16'47" East 124.06 feet, thence South **89°29'47"** East 131.98 feet to the West line of the Southwest Quarter of said Section 29; thence South **89°29'47"** East 38.84 feet; thence North 00°38'34" East 141.79 feet to the North line of said Block 24; thence South 89°21'53" East along the North line of said Block 24, 108.88 feet; thence South **00°38'34"** West 265.17 feet to the South line of said Block 24; thence North 89°21'26" West along the South line of said Block 24, 146.91 feet to the Point of Beginning.

Said Parcel being described as that part lying above a horizontal plane of 696.08 feet USGS lying and below a horizontal plane of 709.25 feet USGS and falling within the boundaries projected vertically of the following described property: Commencing at the Southwest corner of said tract; thence South **89°50'10"** east along the South line thereof 49.50 feet; thence North **00°09'50"** East at right angles thereto 1.31 feet to the point of beginning; thence East at right angles thereto 1.29 feet; thence South at right angles thereto 0.33 feet; thence East at right angles thereto 10.51 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 2.03 feet; thence South at right angles thereto 0.35 feet; thence East at right angles thereto 12.13 feet; thence North at right angles thereto 0.35 feet; thence East at right angles thereto 0.35 feet; thence North at right angles thereto 6.19 feet; thence East at right angles thereto 0.70 feet; thence South at right angles thereto 0.70 feet; thence East at right angles thereto 24.34 feet; thence North at right angles thereto 90.78 feet; thence West at right angles thereto 29.35 feet; thence South at right angles thereto 40.74 feet; thence West at right angles thereto 7.54 feet; thence South at right angles thereto 0.26 feet; thence West at right angles thereto 2.0 feet; thence North at right angles thereto 1.03 feet; thence East at right angles thereto 0.50 feet; thence North at right angles thereto 0.81 feet; thence West at right angles thereto 12.34 feet; thence South at right angles thereto 57.0 feet to the point of beginning, **ALL** in Cook County, Illinois.

EXHIBIT C

DEPOSITARY AGREEMENT

THIS DEPOSITARY AGREEMENT is made as of this ____ day of _____, 2000, by and among _____ ("**Depositary**") and [Owners **under** the Agreement] (collectively, the "Owners").

RECITALS:

A. The Owners are bound by that certain _____ Easement and Operating Agreement (the "Agreement"), which Agreement was recorded with the Office of the Recorder of Deeds of Cook County, Illinois on _____, 2000, as Document No. _____

B. The Agreement provides for the appointment of a **Depositary** to receive all insurance proceeds (including contributions by the Commercial Owner in the event it elects to self-insure) and condemnation awards and to disburse such moneys in accordance with the Agreement.

C. The **Depositary** has been appointed the Depositary under the Agreement and agrees to act in accordance with the terms and provisions of this Depositary Agreement.

NOW, THEREFORE, for and in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The **Depositary** and the Owners shall be bound by and shall be subject to and shall perform in accordance with all terms and provisions of the Agreement, as amended from time to time, including, without limitation, Article 16 and 17 of the Agreement; provided, however, that the Depositary shall not be bound without its prior written consent by any amendment to the Agreement which materially alters the scope of its duties or rights under the Agreement or this Depositary Agreement.

2. All notices, demands, requests, consents, approvals, disapprovals, designations or other communications required, permitted or desired to be given under the Agreement or this Depositary Agreement shall be given in the manner provided in Article 19 of the Agreement, except that all such notices to the **Depositary** shall be addressed to the Depositary as follows:

3. The liability under this Depositary Agreement of an Owner (including a Condominium Unit Owner) shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property of such Owner (including insurance and condemnation proceeds attributable to the Property and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and not any other assets of such Owner, and except as provided in this Section 3 or in the Agreement. Enforcement of liability under Section 8.7 and Article 10 with respect to self-insurance shall not be subject to the foregoing limitation. Assets of an Owner which is a partnership do not include the assets of the partners of such partnership Owner, and a negative capital account of a partner in a partnership which is an Owner and an obligation of a partner to contribute capital to the partnership which is an Owner shall not be deemed to be assets of the partnership which is an Owner. At any time during which an Owner is a trustee of a land trust, all of the covenants and conditions to be performed by it under this Depositary Agreement are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under the trust agreement by reason of any of the covenants or conditions contained in this Depositary Agreement.

4. Capitalized terms which are not defined in this Depositary Agreement shall have the same meanings as in the Agreement.

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

OWNERS:

DEPOSITARY:

EXHIBIT S.HA)DOMESTIC WATER AND HEATING AND COOLING FACILITIES

1. Maintenance; Description of Facilities. The Condominium Property Owner shall perform Maintenance of all Facilities for the delivery of domestic water to serve the Commercial Property and all Facilities that are part of or serve the Improvements' central loop system to provide heating and cooling of the Commercial Property (the "Heating and Cooling Facilities").

2. Sharing of Costs For Maintenance. The Commercial Property Owner shall be responsible for, and shall reimburse the Condominium Property Owner for, an amount equal to eight percent (8%) of the costs of Maintenance of such Facilities (including the Heating and Cooling Facilities). Such amount shall be paid by the Commercial Property Owner to the Condominium Property Owner after such Maintenance costs have been incurred and within ninety (90) days after presentation of evidence reasonably acceptable to the Commercial Property Owner of the completion of such Maintenance, its cost and its payment by the Condominium Property Owner.

3. Variable Charges.

(A) The Commercial Property Owner shall reimburse the Condominium Property Owner for the variable charges imposed on the Condominium Property Owner by the municipal or utility provider (each, a "Utility Provider") of domestic water, natural gas and electricity for the amount of domestic water delivered to the Property and the amount of natural gas and electricity delivered to the Property to operate the Heating and Cooling Facilities. Subject to the provisions of subsection (C), the amount of such reimbursement shall equal 0.26% of such variable charges, provided that with respect to domestic water, such percentage shall be applied to the net variable charge after deducting any amounts chargeable to third parties pursuant to the Cross Easement and Cost Sharing Agreement dated as of _____, 2000 and recorded with the Recorder on _____, 2000 as Document No. 00-_____.

(B) The domestic water account for the Property and the natural gas and electricity accounts for the common elements of the Condominium Property shall be placed in the name of the Condominium Property Owner. Promptly upon the Condominium Property Owner's receipt of each water, natural gas and electric bill for such accounts, it shall provide a copy to the Commercial Property Owner. Promptly upon receipt, the Commercial Property Owner shall determine its share of such bill (in accordance with subsection (A)) and remit such share (in the form of a check, unless otherwise agreed to by the Owners) to the Condominium Property Owner. If there are five (5) days or more left at the time such check is made available for presentment prior to the due date for each such bill prior to the imposition of late fees and penalties, then the check shall be made payable to the Utility Provider (or its designated agent for collection) and the Condominium Property Owner shall make one or more (as it determines for its own purposes) checks for the balance of such bill and shall remit it with all checks to the Utility Provider (or its designated agent for collection) in

time sufficient to avoid late fees and penalties. If there are less than five (5) days left before such bill's due date at the time the Commercial Property Owner's check is made available for presentment, however, then the Commercial Property Owner shall make its check payable to the Condominium Property Owner, which shall be responsible for payment of the entire bill in time sufficient to avoid late fees and penalties.

(C) If any portion of the Commercial Property is operated with a use that would have a materially increased effect on the amount of either domestic water or natural gas or electricity used for heating and cooling by the Heating and Cooling Facilities over that used by a typical office or retail use, then for such time as such use is in operation, the Commercial Property Owner shall be responsible for installing and operating submeters to measure the actual amount of such service used by the Commercial Property. During such period, each time a bill related to the service being submetered is received in accordance with subsection (B), then the Commercial Property Owner shall have readings taken from its submeter for the period covered by such bill and shall apply the then currently-applicable rates and tariffs for such service to the readings to calculate its share of such bill and shall submit its check (in accordance with the procedures set forth in subsection (B)» for that amount, in lieu of the percentage set forth in subsection (A). The costs and expenses of maintaining and repairing any submeters shall be shared by the Owners equally, but the capital costs of installation and replacement of any submeters shall be the obligation of the Commercial Property Owner. In the event any submeters are determined to be defective or tampered with, then in lieu of the actual calculations as provided in this subsection (C), the Owners shall determine their respective shares of each bill based upon the proportions paid most recently for a bill when such submeters were deemed to be accurate, so long as the Commercial Property is devoted to the same or similar uses.

EXHIBIT S.1(B)**MAINTENANCE OF OUTDOOR AREAS**

1. Maintenance; Snow and Ice Removal and Removal of Debris. The Condominium Property Owner shall perform Maintenance of all outdoor areas of the Condominium Property, including all sidewalks, walkways, driveways and parking areas, as and when necessary to comply with ordinances of the Village of Arlington Heights requiring such Maintenance. Such Maintenance shall include the removal of snow and ice and removal of debris. Notwithstanding the foregoing, the Commercial Property Owner shall cause the removal of debris resulting from the operation of businesses in the Commercial Property to be the primary responsibility of the operators of such businesses.

2. No Charge For Use. No charge shall be imposed on the Commercial Property Owner for such services or for the cost of such Maintenance.


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