



Doc#: 0716910073 Fee: \$246.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/18/2007 01:08 PM Pg: 1 of 52

3147 WEST WELLINGTON

DECLARATION OF COVENANTS, CONDITIONS

RESTRICTIONS AND EASEMENTS

TICOR

4003450 (1)

THIS DECLARATION is made and entered into as of the 13th day of JUNE, 2007, by WELLINGTON SQUARE, LLC, an Illinois Limited Liability Company ("Declarant").

RECITALS:

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

B. Declarant is the record legal title holder of the Parcel or Total Parcel as referred herein, in Chicago, Cook County, Illinois legally described as Exhibit A attached hereto. The Total Parcel is presently improved with a four (4) story mixed-use building ("Building") containing floors one (1) through four (4) including those portions of the first floor occupied by commercial space ("Commercial Property"). By recording this Declaration, Declarant intends to make the Total Property subject to this Declaration.

C. Immediately after the recordation of this Declaration, Declarant intends to cause a portion of the Total Property ("Condominium Property") to be submitted to the provisions of the Condominium Property Act of the State of Illinois (the "Act") pursuant to the Condominium Declaration. Said submission of the Condominium Property to the Act will be subject to the terms and provisions of this Declaration.

D. The Plat of Survey attached as Exhibit B of the Declaration of Condominium Ownership For 347 West Wellington Condominium illustrates the Total Parcel and the relative locations of the Commercial Property and the Condominium Property. The Commercial Property is not part of the Condominium Property and is not subject to the Act.

E. Neither the Condominium Improvements nor the Non-Condominium Improvements will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, certain utility services or other facilities and components necessary to the efficient operation and intended use of the Condominium Improvements and the Non-Condominium Improvements.

F. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Condominium Property which will be binding upon each present and future Owner of the Condominium

Property" or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Non-Condominium Property, or of any portion thereof or interest or estate therein, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Non-Condominium Property, which will be binding upon each present and future Owner of the Non-Condominium Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Condominium Property, or of any portion thereof or interest or estate or Unit therein, to the extent provided herein.

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

ARTICLE I

INCORPORATION OF RECITALS

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

ARTICLE II

DEFINITIONS

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

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

2.3 "Commercial Improvements" means all improvements constructed within and upon the Parcels 2, 2A and 3, as legally described on Exhibit C attached hereto and by this reference made a part hereof. In the event of any reconstruction of the Commercial Improvements pursuant to Article XII or Article XVI, the Commercial Improvements shall include any such improvements reconstructed on Parcels 2, 2A and 3.

2.4 "Commercial Property" shall mean Parcels 2, 2A, and 3 on Exhibit A and the Commercial Improvements.

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

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

2.7 Intentionally omitted.

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

2.9 "Condominium Improvements" means all improvements constructed within and upon, as legally described on Exhibit D attached hereto and by this reference made a part hereof. In the event of any reconstruction of the Condominium Improvements pursuant to Article XII or Article XVI, the Condominium Improvements shall include any such improvements reconstructed on Parcel 1 on Exhibit A.

2.10 "Condominium Property" shall mean Parcel 1 on Exhibit A and the Condominium Improvements, together with such additional portions of the Total Property as may, from time to time, be submitted to the Act.

2.11 "Creditor Owner", except where otherwise defined hereunder in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder. The Management Company, as hereinafter defined, shall also be deemed a "Creditor Owner" in the event payment of Operating Expenses, as hereinafter defined, are not made in accordance with the terms of this Declaration.

2.12 "Declarant" means WELLINGTON SQUARE, LLC, an Illinois Limited Liability Company, its successors and assigns.

2.13 "Declaration" means this 3147 West Wellington Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements thereto.

2.14 "Default Rate" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 13.6 hereof.

2.15 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.

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

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

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

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

2.20 Intentionally omitted.

2.21 Intentionally omitted.

2.22 Intentionally omitted.

2.23 "Improvements" means the Condominium Improvements and Commercial Improvements.

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

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

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

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

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

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

2.29 Intentionally omitted.

2.29(a) "Owner of the Non-Condominium Property' means the Owner of the Commercial Property, individually or collectively, as the context may require.

2.30 Intentionally omitted.

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

2.32 Intentionally omitted.

2.33 Intentionally omitted.

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

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

2.36 "Total Property" means the Condominium Property, and the Commercial Property.

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

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

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

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

ARTICLE III

Intentionally Omitted.

ARTICLE IV

EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY

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

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

(B) An Easement for the use for their intended purposes of all Facilities located in the Commercial Property and connected to Facilities' located in the Condominium Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Condominium Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Condominium Property.

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

(D) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, use) by persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Condominium Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article VIII hereof.

(E) A non-exclusive Easement for the use of any hallways, lobbies and stairways located within the building and/or Commercial Property, and any walkways, lobbies or driveways located in or adjacent to the property, to the extent reasonably necessary for access to and from the public roadways and to or from that portion of the property submitted under the Act.

(F) A non-exclusive Easement for pedestrian ingress and egress over, across and upon the Commercial Property to the extent reasonably necessary to visit the commercial facilities located within and upon the Commercial Property.

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

(H) A non-exclusive Easement for the use of the applicable mailboxes located on the first floor of the Building or of such other areas of the Building to which they may be relocated.

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

4.2 Each Easement created under this Article IV which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject to such reasonable limitations as the Owner of the Commercial Property may, from time to time after consultation with the Owner of the Condominium Property, impose with respect to the establishment of paths of ingress and egress and hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Commercial Property and in order to assure the reasonable security of the, Commercial Property provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that the easements granted in Section 4.1(G) shall not be subject to any such limitations.

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

4.4 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, maintenance, operation, replacement and/or removal of such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding

anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the nonperforming grantee or its agents.

ARTICLE V

EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

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

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

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

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

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

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

(F) A non-exclusive Easement for the use of the rubbish storage and rubbish room as provided.

(G) A non-exclusive Easement to the first floor of the Building for pedestrian ingress and egress over, upon and through the lobby of the Building, and any hallways, stairways, walkways or driveways located within or adjacent to the Building, to the extent reasonably necessary for access to and from the public roadways.

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

5.2. Each Easement created under this Article V which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Condominium Property and shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Condominium Property may, from time to time after consultation with the Owner of the Commercial Property impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Condominium Property and provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that Section 5.1(D) shall not be subject to any such limitations.

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

5.4 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, maintenance, operation, replacement and/or removal of such Easement in a manner as to cause as little

disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the nonperforming grantee or its agents.

ARTICLE VI

Intentionally Omitted

ARTICLE VII

SERVICES TO OWNER OF CONDOMINIUM PROPERTY AND COMMERCIAL PROPERTY

7.1 In order to maximize the benefits to be achieved by a unitary administration of the Building, the Owner of the Condominium Property shall appoint a management company ("Management Company") (NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY THE PROPERTY MAYBE SELF MANAGED IF THE BOARD DECIDES IT IS BETTER SERVED BY SELF MANAGEMENT if so it is then deemed the "Management Company" as the case may be) selected by the Board of Directors of the Condominium Association (the "Board") elected at the first annual meeting and subsequent annual meetings of the Condominium Association to serve under and pursuant to the provisions of this Declaration. Such appointment shall be made on behalf of all of the Owners by the aforementioned Board and shall be binding on all of the Owners. The Board and Management Company shall execute an agreement consistent with the Declaration. Notwithstanding anything contained herein to the contrary, no other parties to the Declaration shall have any authority in connection with the decision to appoint the Management Company; provided, however, that the Owners of the Commercial Property shall have the authority to employ the services of separate management companies solely in connection with the management of the Commercial Property.

7.2 The Management Company shall be responsible for the management of the Building on a unified basis. It is the intention of this Declaration that while certain services will be performed by and furnished to the Building by certain Owners or their agents, costs associated in connection with these services shall be borne by, except as otherwise provided, all of the Owners.

7.3 (A) On or before sixty (60) days prior to the commencement of each fiscal year on the 1st day of July during the term hereof, the Board, or a subcommittee

thereof, shall cause a proposed budget ("Proposed Budget") to be furnished to the Board for its approval, which approval shall not be unreasonably withheld, enumerating the estimated operating expenses relating to services provided for under Article VII ("Operating Expenses"), excluding (i) all premiums paid for property (multi-peril) or other insurance coverage and (ii) any and all amounts deemed to be reasonable reserves for capital expenditures or replacement of the Common Elements for the forthcoming fiscal year. The Board agrees to approve or disapprove the Budget within forty-five (45) days from the day of receipt thereof. The Proposed Budget and notice of any Board meeting concerning the adoption of the Proposed Budget shall indicate estimated Operating Expenses in connection with the provisions of all Article VII services. Copies of the Proposed Budget shall be distributed to all Owners and each Unit Owner not less than ten (10) nor more than thirty (30) days prior to any such meeting by the Board.

(B) If the Board disapproves the Proposed Budget for a given fiscal year, until such time as a revised budget is approved, the Building shall be operated on the basis of an interim budget (hereinafter referred to as the "Temporary Budget"). The total amount of budgeted expenditures of the Temporary Budget shall not exceed one hundred fifteen percent (115%) of the budgeted expenditures set forth in the most recently approved Budget, unless an actual expenditure for the prior fiscal year was greater than 115% of the budgeted expenditure, in which case the actual approved expenditure shall be used.

(C) The Proposed Budget, after approval by the Board (the "Budget"), shall be subject to periodic revisions as may be approved by the Board.

(D) During the term of this Declaration, each Owner shall pay to the Management Company that portion of the actual Operating Expenses set forth in the Budget pursuant to the following formula:

Condominium ----- 100%

The aforementioned 100% shall be shared (except as otherwise hereinafter provided) by the Owner of the Condominium Property on a pro rata basis, based upon the proportionate square footage of the total square footage of the Building, (excluding the square footage of the Commercial Property).

Notwithstanding anything in this Declaration or the Declaration of Condominium Ownership For 3147 West Wellington Condominium, the Commercial and Condominium Property shall share general maintenance expenses of the building according to the Cost Sharing Percentage below.

Notwithstanding the foregoing the Condominium Owners shall be responsible for furnishing all maintenance, repairs and replacements to the Building exterior, including those portions of the Building exterior which are part of the Commercial Property; provided, however, that all maintenance, repair and

replacement (including window washing) of the windows which are part of the, Commercial Property shall be furnished by the Commercial Property Owner at its sole cost and expense. The Commercial Property Owner shall reimburse the Condominium Owners from time to time for the cost of maintenance, repair and replacement of that portion of the Building exterior which is part of, or adjacent to, the Commercial Property based on paid bills submitted to the Commercial Property Owner by the Management Company. With respect to invoices for work which covers a portion of the Building exterior which is part of the Condominium and/or and also part of the Commercial Property, an allocation of the cost of the work between the Commercial Property and the Residential and/or Condominium Property shall be made based on a reasonable allocation of such costs made by the Board of the Condominium Association after consultation with the Commercial Property Owner. The Commercial Property Owner shall pay its Cost Sharing Percentage (defined below) of the cost of the maintenance, repair and replacement of the roof of the Building, based on statements therefore periodically furnished to the Commercial Property Owner by the Management-Company. For purposes hereof, the "Cost Sharing Percentage" shall initially be Eleven and Eleven One-Hundredths Percent (11.11%) which was determined by dividing the square footage of the Commercial Property, which as of the recording of this Declaration is approximately 2,000 square feet, by the square footage of the Building, which as of the recording of this Declaration is approximately 18,000 square feet, but in no event shall such amount be less than \$500 per annum (as adjusted with the first adjustment beginning on July 1, 2008 and for each year thereafter, by the increase in the Consumer Price Index since July, 2008). The Consumer Price Index shall have the same meaning as contained in Article XIV hereof.

During the first twelve (12) months after the recording of this Declaration, the Commercial Property Owner shall pay to the Condominium Association an amount to be determined per quarter as its estimated share of the costs to be paid by the Commercial Property Owner hereunder. Within sixty (60) days after the end of the initial twelve (12) month period, a reconciliation shall be made between the estimated payments and the actual costs and an appropriate adjustment shall be made between the Commercial Property Owner and the Condominium Association. During each subsequent twelve (12) month period, the estimated monthly share which shall be paid by the Commercial Property Owner shall be equal to one-twelfth (1/12) of the actual costs charged to the Commercial Property Owner for the preceding year or as otherwise by agreement between the Condominium Association and the Commercial Property Owner due and payable on the 1st of each calendar month. A reconciliation and appropriate adjustments shall be made within sixty (60) days after the end of each twelve (12) month period. Any payments which are due from the Commercial Property Owner to the Condominium Association, or vice versa, as a result of a reconciliation, shall be paid within ten (10) days after notice or demand has been made. If either party fails to make any required payment hereunder within ten (10) days after notice or demand has been made,

then the Creditor Owner shall have the rights and remedies available pursuant to Article XIII.

(E) Intentionally omitted.

7.4 The Owners shall cooperate with the other Owners and the Management Company in securing and providing the following services to the Building, through the Management Company to the extent required:

(A) **Heating System**. Through the heating system, the heating requirements in a manner consistent with the operation of a mixed-use building.

(B) **Air Conditioning System**. Through the air conditioning system, the air conditioning requirements in a manner consistent with the operation of a mixed-use building.

(C) **City Water Supply System**. All city water required from city mains through the water supply systems located in the Building.

(D) **Sanitary Waste System**. Maintenance, repair and replacement of the drain lines and risers in a manner consistent with the operation of a mixed-use building.

(E) **Electrical Supply System**. Electrical requirements for use in the Condominium Property and Commercial Property.

(F) **Roof Storm Drains, Parapet**. Maintenance and repair of the roofs on the Building, the storm drains and parapet in a manner consistent with the operation of a mixed-use building.

(G) **Street Level**. All landscaping maintenance necessary for upkeep of street level exterior of Building, remove snow from sidewalks leading to the street level entrances to the Building, and keep such sidewalks and street level entrances to the Building free from debris and obstructions to pedestrian and vehicular traffic, as applicable. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY THE OWNERS OF THE COMMERCIAL PROPERTY MAY HAVE AN OUTSIDE CAFE TO THE EXTENT PERMITTED BY THE CITY OF CHICAGO.

(H) **Exterior Maintenance**. Maintenance of the exterior of the Building in a good state of repair, including street level exterior, and sidewalks contiguous thereto.

(I) **Window Cleaning**. Washing and cleaning of all exterior windows of the Building in a manner consistent with the standards of a mixed-use building.

7.5 The **Owners of the Condominium Property** shall furnish or cause to be furnished the following services to the Owners of the Condominium Property when, as and if required:

(A) **Elevators**. Not applicable.

(B) **Driveways, Hallways, Stairways and Walkways**. Maintenance, repair, inspection and replacement of all driveways, hallways, stairways and walkways to the extent reasonably necessary for access to the Condominium Property and Commercial Property.

7.6 The Condominium Owners shall in addition to the services hereinabove described, also furnish the following services to the Building, through the Management Company, to the extent required:

(A) **Scavenger Services and Maintenance of Service Area as applicable**. Scavenger service in a manner consistent with the operation of a mixed-use building.

(B) **Security**. Provide security at the entrance to the Building in a manner consistent with the standards of a mixed-use building.

(C) **Additional Services**. Such additional services as may be contained in a proposed Budget attached to Property Report.

7.7 Each Owner shall make a good-faith effort to operate its Facilities and furnish all services, including but not limited to the temperature condition, (A) at the lowest possible costs reasonably available without degrading the quality of any services furnished and (B) in a manner so as to provide each Owner with comfortable occupancy and enjoyment of the Commercial Property for its intended use as a commercial facility, of the Condominium Property for its intended use as a condominium, respectively but in no event shall any Owner be obligated to use more than reasonable diligence in performing the services required of such Owner as set forth in Article VII of this Declaration.

7.8 Statements for services rendered pursuant to Article VII hereof, provisions for payment thereof and provisions for additional payments incurred in connection with such services shall be made in accordance with the terms and provisions herein.

7.9 If any Owner shall fail to perform as required by the terms and conditions of Sections 7.1, 7.2, 7.3, 7.4, 7.5 or 7.6 of this Declaration (except when such failure is caused by another Owner, Unavoidable Delay or an Owner is entitled to discontinue such service pursuant to Section 7.10 hereof) and such failure shall continue for a period often (10) days after written notice thereof to the Owner obligated to provide the service, the non-defaulting Owner shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from

such failure. For any period in which a Creditor Owner is performing pursuant to Section 7.9, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance.

7.10 If, at any time, any Owner ("Defaulting Owner") shall fail to pay to any other Owner ("Creditor Owner") any sum of money payable to the Creditor Owner pursuant to the provisions of Section 7.9 hereof for ten (10) days after written notice from the Creditor Owner demanding payment of said sum of money, then the Creditor Owner may discontinue furnishing of the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes the Defaulting Owners' obligation to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, the Defaulting Owner shall not be deprived of any such services unless and until it shall finally be determined by unreviewable court proceedings, arbitration or otherwise that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

ARTICLE VIII

STRUCTURAL SUPPORT

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

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

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

(2) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications

approved by (except as otherwise provided, in Article XXIII hereof) the Owners of the portions of the Total Property affected thereby, the Architect and Secured Property Lenders with respect to the portion of the Total Property affected thereby and, subject to the provisions of Article XIII hereof, shall pay all costs and expenses, including any architects or other fees, in connection with construction of substitute or additional support.

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

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

ARTICLE IX

COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

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

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

Property or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property; and

(B) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting coverage on any other Owner's portion of the Total Property if noncompliance by it with respect to its portion of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners, or (ii) render any other Owners portion of the Total Property uninsurable, or (iii) create a valid defense to any other Owners right to collect insurance proceeds under policies insuring any other Owner's portion of the Total Property, provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any other Owner's portion of the Total Property, such other Owner shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and if upon expiration of thirty (30) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

9.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Owner's portion of the Total Property, or on its portion of the Total Property, arising by reason of its act or any work or materials which it has ordered. Notice of the filing of any such lien shall be served upon the Secured Property Lenders. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien plus interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be

required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Secured Property Lenders; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner and to the Secured Property Lenders if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner or, if loan documents so provide, to the Secured Property Lenders, either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Secured Property Lenders, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to the Creditor Owner and the Secured Property Lenders, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the document securing the Secured Property Lenders, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within five (5) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

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

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

ARTICLE X

REAL ESTATE TAXES

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

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

(A) **Allocation of Assessed Valuation of Land**. The assessed valuation of the land shall be allocated as follows:

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

$$\frac{\text{Value of condominium improvements}}{\text{Value of improvements}} \times \text{Assessed valuation of land}$$

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

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

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

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

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

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

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

(C) **Allocation and Payment of Taxes**. The Owner of the Non-Condominium Property shall pay the combined tax bill or bills for the Total Property prior to their due date. The Owner of the Condominium Property shall be responsible for and shall pay or reimburse the Owner of the Non-Condominium Property (within ten (10) days after the demand of the Owner of the Condominium Property therefor) for its share of the total real estate taxes levied in the combined tax bill or bills for the Total Property, which share shall be calculated as follows:

Condominium Property share equals:

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

10.3 If any Owner (the "Defaulting Owner") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article X, then any other Owner (the "Creditor Owner") may, after at

least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article XIII hereof.

10.4 Any Owner may, if it shall so desire, endeavor at any time or times, to obtain a lowering of the assessed valuation upon the Total Property for the purpose of reducing taxes thereon ("Protesting Owner"). In the event such protest shall be made by a Protesting Owner prior to the time that the Condominium Property and Non-Condominium Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owner at least ten (10) days prior to the filing of the objection. Any non-Protesting owner may elect within ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event any other Owners fail to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose and any such tax refund shall be the property of Protesting Owner. Notwithstanding the above, if any other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes, the Owners who have protested shall apportion the tax refund in accordance with their respective portions of the real estate taxes.

ARTICLE XI

INSURANCE

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

(A) The Owner of the Condominium Property and the Owner of the Commercial Property shall each keep their respective portion of the improvements insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than ninety percent (90%) of the Insurable replacement cost thereof. The Owner of the Condominium Property shall keep its portion of the improvements insured for no less than "all risk or "special form" coverage on real property and broad form named perils on personal property for an amount not less than one hundred percent (100%) (or such lesser percentage as may be permitted under the Act, but in no event less than ninety (90%) of the insurable replacement cost thereof). Such policies shall be endorsed with a replacement coverage endorsement and agreed amount clause and no co-insurance penalty shall be applicable.

(B) The Owner of the Condominium Property and the Owner of the Commercial Property shall maintain Comprehensive General Liability

insurance with Broad Form Extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of residential buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with at least additional \$1,000,000 umbrella coverage and containing "X", "C" and "U" coverage during any period of construction.

11.2 Unless all Owners otherwise agree in writing, the Owner of the Condominium, Property shall purchase the insurance policies required under Section 11.1 (A) for the Condominium Property, Commercial Property and , if any, and required under Section 11.1 (B) for the Condominium Property. The Owner of the Condominium Property shall purchase such policy or policies from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than "Excellent" according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. The Owner of the Commercial Property may procure and maintain the insurance specified in Section 11.1(B) covering their separate interests, apart from the Owner of the Condominium Property; provided, that the insurance company is authorized and licensed to transact business in the State of Illinois and holds a current Policyholder's Alphabetical and Financial Size Category Rating of not less than "Excellent" according to Best's Insurance Reports. Such policy or policies may be issued in combination covering one or all items and covering jointly the interests of each Owner, and shall name the other Owners as additional insureds. Each of the Owners hereby agree to cooperate to procure and maintain insurance policies which jointly cover the interests of all of the Owners.

11.3 Each policy described in Section 11.1 and Section 11.2 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall, with respect to all of the foregoing policies, insure as additional insureds the Owner of the Condominium Property, the Owner of the Commercial Property and their respective beneficiaries thereunder; provided, however, that so long as any portion of the Total Property shall be subject to the Act, the Association and not the individual Unit Owners or the Owner of that portion of the Total Property so submitted shall be insured as an additional insured; (iii) shall provide, except for liability insurance described in Section 11.1(B), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or

material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days advance written notice shall be sufficient and (v) shall, if available, provide, except for the liability insurance required under Section 11.1(B), that all amounts payable thereunder shall be paid to the Depositary in accordance with Articles XVII and XXIII hereof. Nothing contained in this Section 11.3 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that the mortgagee under any mortgage upon any part of the Total Property receiving any proceeds of any insurance policy described in Section 11.1(A) shall deposit the Insurance proceeds with the Depositary in accordance with Articles XVII and XVIII to the extent that the owner of the mortgaged property receiving such proceeds would be required to do so, except that such obligation for such deposit by a mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then uncured default under the mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depositary a sufficient amount, which when added to the proceeds to be deposited by the mortgagee, will be at least equal to the cost, as estimated by the mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

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

11.5. Copies of all renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner (or, if appropriate, to the Condominium Association) and to

the Secured Property Lenders, at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Should an Owner fail to provide and maintain any policy of insurance required under this Article XI or pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may purchase such policy and the costs thereof (or the Defaulting Owners share of such costs) shall be due from the Defaulting Owner upon the Creditor Owners written demand therefor plus interest at the Default Rate from the date of payment of the Creditor Owner to the date of reimbursement to the Creditor Owner.

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

11.7 Intentionally Omitted.

11.8 In the event the Owner of the Condominium Property is subject to any loads, including, without limitation, any restaurant load, general liability load or umbrella liability load, in connection with any insurance policy maintained pursuant to this Article XI, then the Owner of the Commercial Property shall be jointly and severally liable for the reimbursement to the Owner of the Condominium Property for such increased amounts.

ARTICLE XII

MAINTENANCE AND REPAIR: DAMAGE TO THE IMPROVEMENTS

12.1 Intentionally Omitted.

12.2 Except as expressly provided hereinafter in this Article XII in the event of fire or other casualty, the Owner of the Condominium Property shall, through the Management Company, keep the Condominium Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Condominium Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Any such costs incurred in accordance with this Section 12.2 shall be paid for in accordance with

the Budget, except as hereinafter provided in the event of fire or other casualty and except for such costs incurred in connection with the interior of any Unit or any system which serves a Unit exclusively.

12.3 Except as expressly provided hereinafter in this Article XII in the event of fire or other casualty, the Owner of the Commercial Property shall (i) through the Management Company, keep the Commercial Property in good and safe order and condition, and (ii) at its sole cost and expense make all repairs or replacements of, in, on, under, within, upon or about the Commercial Property, whether said repairs or replacements are to the interior and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Any such costs incurred in accordance with this Section 12.3 shall be paid for in accordance with the Budget, except as hereinafter provided in the event of fire or other casualty and except for such costs incurred in connection with the Interior of any space or any system which serves exclusively a tenant's space.

12.4 Intentionally Omitted.

12.5 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Condominium Improvements only or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article XVIII hereof, be entitled to withdraw any insurance proceeds held by the 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 of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article VII hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article XVIII hereof, be entitled to withdraw any insurance proceeds and any other monies held by the 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 the

Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

12.6 If the Improvements are damaged by fire or other casualty and if the provisions of Section 12.5 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of Section 12.5; then the repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners which are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Secured Property Lenders, if required. In the event such Owners, and the Secured Property Lenders, if required fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article XIV hereof. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Secured Property Lenders, if required.

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

12.8 In any instance of repair or restoration pursuant to Sections 12.5 or 12.6 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article XII. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share 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 Depositary in the face amount of the share owed or a loan commitment, reasonably satisfactory to the other Owners and the Secured Property Lenders, if required, issued by a responsible lending institution, to disburse an amount equal to such Owners share of such excess amount to the Depositary to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owners share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 12.8, or fails to deliver the security provided for herein within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owners share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

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

12.10 If any of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Secured Property Lenders, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owners Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, subject to the rights of the Secured Party Lenders. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 12.5, 12.6, 12.7, 12.8 and 12.9 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such a manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any

violations of applicable ordinances of the City of Chicago caused by the other party's failure to rebuild.

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

ARTICLE XIII

LIENS. RIGHTS AND REMEDIES

13.1 If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles XII or XVI, a lien against any condemnation award or insurance proceeds payable to Defaulting Owner for loss or damage to such portion of the Total Property or otherwise under insurance policies carried pursuant to Article XI hereof, or (ii) in the event of a default under Articles VII, VIII, IX, X, XI, XXII or XXIII, a lien against the portion of the Total Property owned by the Defaulting Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article XIII or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 13.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Property or other interest of the Defaulting Owner, other than a bona fide mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Property or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against such portion of the Total Property at the time of the recording of the notice of lien.

13.2 In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Condominium Property subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of the Condominium Property from the Act and not to repair and restore the Condominium Property as required by this Declaration, notwithstanding the foregoing sentence, then the other Owners shall have a lien on the Condominium Property as applicable on any insurance proceeds payable for loss or damage to such portion of the Total Property under Insurance policies earned pursuant to Article XI hereof and on any condemnation award pursuant to Article XVI, in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Improvements;

(b) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the Improvements;

(c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Total Property or any part thereof; and,

(d) the architectural unity and aesthetic appearance of the restored Improvements as a mixed-use property.

13.3 Any lien described in Sections 13.1 or 13.2 hereof shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure, stating that it is a lien created by Sections 13.1 or 13.2, as applicable, of this Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid the other Owners, or the Owner of the Condominium Property shall have discharged its obligation for such repair and restoration as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

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

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

13.6 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum

first became due hereunder until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three (3%) percent per annum in excess of the annual rate of interest from time to time announced by LaSalle Bank, N.A. of Chicago, Illinois as its "corporate base rate" of interest or a reasonably equivalent substitute thereof in the event a corporate base rate is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "corporate base rate" or reasonable equivalent thereof is not announced by LaSalle Bank, N.A. of Chicago, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

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

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

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

13.10 The Management Company described in Article VII hereof shall coordinate all requests and contacts between the Owner of the Commercial Property and the Owner of the Condominium Property and the tenants of the relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render the Management Company liable to either such tenants or the Unit Owners or tenants of the Units or Owner of the Condominium Property or Owner of the Commercial Property for acts of any other party.

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

13.12 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance

with Article XXI hereof, the Creditor Owner in any proceeding arising out of this Article XIII, together with full power and authority to compromise any claims out of the terms of this Article XIII and to grant releases.

ARTICLE XIV

ARBITRATION

All questions, differences, disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$50,000 (in 2007 equivalent dollars) or involving either of the following matters: (i) selection of an insurance company or apportionment of insurance premiums under Section 11.2 hereof and (ii) appointment of an architect or a contractor or contractors pursuant to Sections 12.6, 16.4 or 17.1 hereof, which shall be not resolved within sixty (60) days after same shall arise, except where otherwise expressly provided herein, shall be submitted for arbitration to a panel of three (3) arbitrators at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules. Such arbitration may be initiated at the request of any Owner. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne in equal shares by the Owners which are parties to such arbitration. The Owner requesting arbitration shall notify the Secured Property Lenders of its request to arbitrate within five (5) days thereafter. Any award of the arbitrators shall be final and binding upon the Owners and judgment thereon shall be entered by any court exercising jurisdiction over the Total Property or the Owners.

For purposes of this Article XIV, "2007 equivalent dollars" means the equivalent purchasing power of the value of One Dollar (\$1.00) in calendar year 2007. The 2007 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the amount, if any, by which (x) the monthly Consumer Price index (as hereinafter defined) last published prior to the date of such determination exceeds (y) the Consumer Price Index for December, 2007, and the denominator of which is the Consumer Price index for December, 2007. As used herein, the term "Consumer Price Index" shall mean the Consumer Price index for Urban Wage Earners and Clerical Workers, City of Chicago, All items (Base Year 1967 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or equivalent index agreed to by the Owners if such index is no longer available.

ARTICLE XV

UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or

materials, war or national defense pre-emptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE XVI

CONDEMNATION

16.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article XVI, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the improvements shall be performed, in accordance with the requirements of this Article XVI.

16.2 All Awards resulting from the taking of all or any part of the Total Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depositary and disbursed by the Depositary as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Section 7.1 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property.

16.3 In the event of (a) a taking (other than a temporary taking) of a part of the Condominium Property only, or (b) a taking (other than a temporary taking) of a part of the Commercial Property only, then, subject to the provisions of Section 16.6 hereof, the Owner of the portion of the Total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article XIX hereof and to retain any excess not required for such repair and restoration.

16.4 In the event of a taking other than (a) a temporary taking described in Section 16.2 hereof, (b) a taking described in Section 16.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 16.6

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

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

16.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 16.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 16.3 and 16.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be

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

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

ARTICLE XVII

ARCHITECT

17.1 The appointment of an architect in accordance with this Article XVII shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Property. The Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article XIV. The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B141, 1977 Edition, entitled "Standard Form Agreement between Owner and Architect." Any Owner may cause any Architect to be replaced if it demonstrates to the other Owners that such then serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owners and the Secured Property Lenders, requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform diligently or competently in accordance with the Owner-Architect Agreement. If, in the opinion of an Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 17.1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article XIV hereof.

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

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

ARTICLE XVIII

DEPOSITARY

18.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 11.1(A) hereof and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

18.2 As used hereinafter in this Article, the phrase "Damaged Parcel" shall refer to any of the Condominium Property or Commercial Property, or any combination thereof if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Commercial Property or the Condominium Property then the Secured Property Lenders applicable to the Damaged Parcel shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect

either to act as Depositary or to appoint the Depositary with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depositary with regard to such funds.

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

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

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

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

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

18.8 The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depositary shall have been given an express written authorization from the Owners provided that if only one Owner claims said

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

18.9 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depositary and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depositary, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary. Unless the Depositary shall have undertaken to pay interest thereon, monies received by the Depositary pursuant to any of the provisions of this Declaration shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

18.10 The Depositary may resign by serving; written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Secured Property Lenders, appoint a substitute who qualifies under Section 18.1 hereof, and the Depositary shall transfer all funds, together with copies of all records held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Secured Property Lenders shall appoint a substitute who qualifies under Section 18.1 hereof within thirty (30) days thereafter, and the Depositary shall transfer all funds, together with copies of all records held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Secured Property Lenders shall fail to appoint a substitute within said additional thirty (30) day period, then the Depositary may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 18.1 hereof.

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

ARTICLE XIX

DISBURSEMENTS OF FUNDS BY DEPOSITARY

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

(1) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the work up to the date of said certificate and any other information required by the Mechanics' Liens Act set forth in Chapter 770 of the Illinois Compiled Statutes (the "Mechanics' Liens Act") and any title insurer affording coverage against mechanic's liens;

(2) That the sum requested, plus all sums previously disbursed, does not exceed the cost of the work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties).

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

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

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

(1) Upon receipt of contractors' and subcontractors sworn statements required under the Mechanics' Liens Act accompanied by partial or final

waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics' liens from the persons named in the sworn statement, and

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

The Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Secured Property Lenders or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 19.1 (A) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

ARTICLE XX

ESTOPPEL CERTIFICATES

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

- (1) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (2) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;
- (3) whether there are any sums (other than those arising out of the normal course of operation of the improvements within the previous forty-five (45)

days) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;

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

(5) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder or otherwise known by the Owner against the enforcement of the requesting Owner's obligations hereunder;

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

(7) 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;

(8) the nature of any arbitration proceeding or finding under Article XIV, made within the ninety (90) days preceding the date of such Estoppel Certificate;

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

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

20.2 The Owner of any portion of the Total Property which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge the requesting Owner a fee for preparing, executing and delivering the Estoppel Certificate and may, in its sole discretion, limit to items (2) and (6) described above the statements made in the Estoppel Certificate.

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

ARTICLE XXI

CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Total Property is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of such portions of the Total Property, any consents, waivers, approvals and appointments which may be granted by an Owner, shall be exercised by the Condominium Association on behalf of the Owner of such portions of the Total Property, except for such rights or benefits expressly granted to Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners and in the event of any such action taken by the Condominium Association, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by the Condominium Association. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Unit Owners who are members of the Condominium Association shall be taken on behalf of the Condominium Association and all such Unit Owners 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 directors of the Condominium Association except as otherwise noted herein. Any requirement for any Unit Owner to furnish a notice or deliver a document may also be performed by the Condominium Association. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, Easements or privileges granted by this Declaration for the benefit of the Total Property or any part thereof. All obligations under this Declaration of the Owner of any portion of the Total Property subject to the Act shall be the obligations jointly and severally of both the Condominium Association and all Unit Owners in such portions of the Total Property and any lien arising against the Owner of any such portion of the Total Property may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements appurtenant to such portion of the Total Property, which each Unit Owner may discharge in accordance with the provisions of Article XIII hereof.

ARTICLE XXII

Intentionally Omitted.

ARTICLE XXIII
ALTERATIONS

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

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

- (1) unreasonably diminish the benefits afforded to such other Owners by any Easement or unreasonably interrupt such other Owners use or enjoyment of any Easement;
- (2) materially alter the facade of the Improvements except some minimum discrete sign for the Commercial Space is permitted;
- (3) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property;
- (4) affect Facilities benefiting the other Owner other than minimally or incidentally; or
- (5) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.

Notwithstanding anything contained herein to the contrary, the Owner of the Commercial Property shall have the right and is hereby granted the necessary easements to: (a) make additional openings in the first floor of the Building Improvements for the purpose of expanding commercial facilities in the Buildings; (b) reconfigure any portion of the Commercial Property; and (c) undertake such changes (subject to the following) in the Commercial Property, in its sole discretion, as it desires to make.

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Secured

Property Lenders, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Secured Property Lenders, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 23.1. If such other Owners and the applicable Secured Property Lenders consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Secured Property Lenders whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners' consents to the proposed Alterations, and if, in the good faith opinion of the other Owners or the applicable Secured Property Lenders, the Altering Owner has violated or will violate the provisions of Section 23.1 (A) or (B), such Owners or Secured Property Lenders (the "Objecting Party"), believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 23.1(A) or (B) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 23.1 (A) or (B), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any 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 23.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

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

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

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

other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Others from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

23.3 An Altering Owner performing any work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the various Parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act shall only be enforceable against the portion of the Total Property owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 60/21 of the Mechanics' Liens Act in connection with giving notice of such "no lien" provision.

ARTICLE XXIV

NOTICES

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

For Notices to the Owner
of the Condominium Property:

3147 West Wellington Condominium
Association
2555 West Fullerton
Chicago, IL. 60647

Commercial Property:

Wellington Square, LLC
c/o Barry Brandwein
2555 West Fullerton
Chicago, IL 60647

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

24.2 So long as any portion of the Total Property remains subject to the Act, (a) the Owner of the other portions of the Total Property may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Condominium Association hereby

being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property subject to the Act and (b) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portion of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.

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

ARTICLE XXV

Intentionally Omitted

ARTICLE XXVI

LIMITATION OF LIABILITY

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

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

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

ARTICLE XXVII

GENERAL

27.1 In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owners to promote the efficient operation of each respective portion of the Total Property and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate or interest in the Total Property. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Declaration, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation and which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) (i) such other instruments, documents, materials and information as any other Owner hereto may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder, and (ii) such grants of Easements to and agreements with utility companies as any other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by such Owner, provided that the Secured Property Lenders which hold any mortgage on the portions of the Total Property on which such Easement is granted have first consented in writing to such Easements.

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

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

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

(B) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in

this Declaration. A Special Amendment may also contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the maintenance, operation and administration of the Total Property. Declarant also reserves the right to include, within a Special Amendment, a revision to the legal descriptions of the Commercial Property located on the first floor of the Building. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this section shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.

27.5 Except for the perpetual Easements provided for under this Declaration, the covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of ten (10) years, subject to amendment or termination as hereinabove set forth in Section 27.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration.

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

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

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

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

27.10 This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary (except the Secured Property Lenders) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

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

27.12 Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Commercial Property or the Owner of the Condominium Property a duplicate original of such notification shall be given to the Secured Property Lenders affected thereby at the address for the giving of notice set forth in the mortgage or trust deed securing indebtedness to such Secured Property Lenders, or to any other address of which notice by United States mail, return receipt requested, shall have been given to the other parties hereto.

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

27.14 Each Owner shall have the right to maintain, in its respective portion of Total Property, such signage on the facade of the Improvements in order to identify such Owners use of the Improvements.

IN WITNESS WHEREOF, the Members of the Declarant have caused their names to be signed to these presents, this 13th day of JUNE, 2007.

WELLINGTON SQUARE, LLC, an Illinois Liability Company

By: [Signature]
Barry P. Brandwein, Member

By: [Signature]
Zack Wagman, Member

STATE OF ILLINOIS

SS.

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that BARRY P. BRANDWEIN, Member, and ZACK WAGMAN, Member of WELLINGTON SQUARE, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Members of WELLINGTON SQUARE, LLC, an Illinois limited liability company, appeared before me this day In person and acknowledged that they signed and delivered the said instrument as their owner free and voluntary act and as the free and voluntary act of said WELLINGTON SQUARE, LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of JUNE, 2007.

Michael W Brandwein
Notary Public



CONSENT OF MORTGAGEE

MB FINANCIAL BANK, a Federal Savings Bank, holder of a Mortgage on the property, dated _____ and recorded _____ as Document No _____, hereby consents to the Declaration of Covenants, Conditions, Restrictions and Easements ("Operating Declaration") and agrees that said Mortgage is subject to the provisions of said Operating Declaration.

IN WITNESS WHEREOF, the said MB FINANCIAL BANK has caused this instrument to be signed by its duly authorized officers on its behalf, all done at Chicago, Illinois, on this 13 day of JUNE, 2007.

MB FINANCIAL BANK

Andrea Beaty
AVP

ATTEST:

Teresa Blancacte
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK

The undersigned, a Notary Public in and for said County and State} do hereby certify that *Andrea Beaty* and *Teresa Blancacte*, AVP and Assistant Secretary, respectively, of MB FINANCIAL BANK, personally known to me to be the same persons whose names are subscribed' to the foregoing instrument as such AVP and Assistant Secretary, appeared before me this day in person and acknowledge that they signed, sealed and delivered said instrument as their free and voluntary 'act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth. .

GIVEN under my hand and notarial seal this 13 day of JUNE. 2007.

Marianne Fonsino
Notary Public



EXHIBIT A**PARCEL 1: CONDOMINIUMS:**

PROPOSED UNITS 3147-G, 3147-2, 3147-3, 3147-4, 3149-G, 3149-2, 3149-3, 3149-4, 3151-2, 3151-3, 3151-4, 2955-2, 2955-3, 2957-2, 2957-3 IN 3147 WEST WELLINGTON CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PARCEL 1:

LOTS 47 AND 48 IN BENTLEY'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: NON-CONDOMINIUM PARCEL

THAT PART OF LOTS 47 AND 48 IN BENTLEY'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, KNOWN AS NON-CONDOMINIUM/COMMERCIAL PARCEL) LYING AT AND ABOVE A HORIZONTAL PLANE AT ELEVATION + 16.64 (CITY OF CHICAGO BENCHMARK DATUM) AND LYING AT AND BELOW A HORIZONTAL PLANE AT ELEVATION +25.58 (CITY OF CHICAGO BENCHMARK DATUM), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 48; THENCE SOUTH ALONG THE WEST LINE OF LOTS 47 AND 48 A DISTANCE OF 1.29 FEET; THENCE EAST AND PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 0.87 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING THE FINISHED SURFACE OF INTERIOR WALLS OF THE 3 STORY BRICK BUILDING (COMMONLY KNOWN AS #2955-57 N. KEDZIE AVE.); THENCE EAST 0.45 FEET; THENCE NORTH 0.45 FEET; THENCE EAST 6.61 FEET; THENCE SOUTH 0.50 FEET; THENCE EAST 44.60 FEET; THENCE SOUTH 18.00 FEET; THENCE WEST 7.66 FEET; THENCE SOUTH 8.17 FEET; THENCE WEST 4.62 FEET; THENCE NORTH 6.11 FEET; THENCE WEST 0.57 FEET; THENCE SOUTH 6.11 FEET; THENCE WEST 3.00 FEET; THENCE NORTH 4.89 FEET; THENCE WEST 35.10 FEET; THENCE NORTH 0.30 FEET; THENCE WEST 0.75 FEET; THENCE NORTH 20.93 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS. (NOTE: ALL CALLS DESCRIBED ARE ALONG THE FINISHED INTERIOR WALLS).

PARCEL 2A: NON-CONDOMINIUM PARCEL

THAT PART OF LOTS 47 AND 48 IN BENTLEY'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, KNOWN AS NON-CONDOMINIUM/COMMERCIAL PARCEL) MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 48; THENCE SOUTH ALONG THE WEST LINE OF LOTS 47 AND 48 A DISTANCE OF 23.94 FEET; THENCE EAST AND PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 15.26 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING THE FINISHED SURFACE OF INTERIOR WALLS OF THE 3 STORY BRICK BUILDING (COMMONLY KNOWN AS #2955-57 N. KEDZIE AVE.) AND LYING AT AND ABOVE A HORIZONTAL PLANE AT ELEVATION + 16.64 (CITY OF CHICAGO BENCHMARK DATUM); THENCE EAST 13.12 FEET TO A POINT LYING AT AND BELOW A HORIZONTAL PLANE AT ELEVATION +27.80 (CITY OF CHICAGO BENCHMARK DATUM); THENCE CONTINUING EAST, 6.88 FEET; THENCE SOUTH 3.60 FEET; THENCE WEST 6.88 FEET TO A POINT LYING AT AND BELOW A HORIZONTAL PLANE AT ELEVATION +27.80 (CITY OF CHICAGO BENCHMARK DATUM); THENCE CONTINUING WEST 13.12 FEET TO A POINT LYING AT AND ABOVE A HORIZONTAL PLANE AT ELEVATION +16.64 (CITY OF CHICAGO BENCHMARK DATUM); THENCE NORTH 3.63 TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS. (NOTE: ALL CALLS DESCRIBED ARE ALONG THE FINISHED INTERIOR WALLS).

PARCEL 3: NON-CONDOMINIUM PARCEL

THAT PART OF LOT 47 IN BENTLEY'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, KNOWN AS NON-CONDOMINIUM/COMMERCIAL PARCEL) LYING AT AND ABOVE A HORIZONTAL PLANE AT ELEVATION + 16.64 (CITY OF CHICAGO BENCHMARK DATUM) AND LYING AT AND BELOW A HORIZONTAL PLANE AT ELEVATION +25.21 (CITY OF CHICAGO BENCHMARK DATUM), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 47; THENCE NORTH ALONG THE WEST LINE OF LOTS 47 AND 48, A DISTANCE OF 1.58 FEET; THENCE EAST AND PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 0.95 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING THE FINISHED SURFACE OF INTERIOR WALLS OF THE 3 STORY BRICK BUILDING (COMMONLY KNOWN AS #2955-57 N. KEDZIE AVE.); THENCE NORTH 19.11 FEET; THENCE EAST 38.72 FEET; THENCE SOUTH 6.10 FEET; THENCE EAST 0.40 FEET; THENCE NORTH 6.10 FEET; THENCE EAST 4.65 FEET; THENCE SOUTH 19.17 FEET; THENCE WEST 43.79 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS. (NOTE: ALL CALLS DESCRIBED ARE ALONG THE FINISHED INTERIOR WALLS).