THIS DOCUMENT IS PREPARED
BY AND WHEN RECORDED
MAIL TO:

HOWARD S. DAKOFF, ESQ.
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CHICAGO, ILLINOIS 60602

0717622056
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Cook County Recorder of Deeds
Date: 06/25/2007 12:51 PM Pg: 1 of 79

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE EMERSON

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE EMERSON (this "Declaration") is made and entered into as of the 22nd day of May, 2007 by NORWOOD EMERSON LLC an Illinois limited liability company ("Declarant").

RECITALS:

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

B. Declarant is the record legal titleholder of a portion of the Future Development Parcel as defined in the Condominium Declaration ("Total Parcel"), situated in Mount Prospect, Cook County, Illinois, and legally described in Exhibit 1.10 hereto.

C. Declarant's predecessor in interest, Village Lofts, L.L.C., an Illinois limited liability company, ("VLLLC") reserved the right to add-on and annex to the Association ("Add-On Rights"), all or any portion of the property legally described as the Future Development Parcel, all pursuant to the terms and conditions of Section 22 of the Declaration Of Condominium Ownership And Of Easements, Restrictions, Covenants And By-Laws For The Lofts At Village Centre Condominium Association ("Condominium Declaration"), which (i) was recorded in the office of the Recorder of Deeds of Cook County ("Recorder"), Illinois on December 26, 2002 as Document No. 0021438162 (ii) real estate is described on Exhibit 1.40 hereto and (iii) was submitted the Illinois Condominium Property Act ("Property").

D. Declarant is the successor in interest to VLLLC by virtue of a deed recorded on August 26, 2005 as Documents No. 0523835330 and by which Declarant acquired and succeeded in interest to VLLLC's Add-On Rights.

E. After this Declaration is recorded with the Recorder, Declarant will record an amendment to the Condominium Declaration to add-on the Total Parcel to the Association, which shall be subject to this Declaration. Before the recording of the add-on amendment and this Declaration, the Condominium Property contains a single mixed-use residential/retail

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building ("The Lofts") having a residential entry lobby address of 40 E. Northwest Highway, Mount Prospect, Illinois 60056. After the recording of the add-on amendment and this Declaration, the Condominium Property will contain a second mixed-use residential/retail building ("The Emerson") having a residential entry lobby address of 100 S. Emerson Street, Mount Prospect, Illinois 60056

F. The Commercial Building and the Residential Building on the Total Property may be structurally and/or functionally dependent on the other and may depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Commercial Building and the Residential Building.

G. Declarant desires by this Declaration to provide for the efficient operations of the Commercial Property and the Residential Property, to assure the harmonious relationship of the owners of each such Property; and to protect the respective values of each such Property, by providing for, declaring and creating certain easements, covenants and restrictions benefiting and burdening the Commercial Property and the Residential Property.

NOW, THEREFORE, Declarant hereby declares that the Total Property and any part thereof is and shall be owned, held, mortgaged, transferred, assigned, sold, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that this Declaration and each of the provisions, easements, covenants, conditions, restrictions, burdens, uses, privileges and charges set forth herein or 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 1

DEFINITIONS

1.1 "Act" means the Condominium Property Act of the State of Illinois in effect on the date the Condominium Declaration is recorded, as amended from time to time.

1.2 "Association" means The Lofts at Village Centre Condominium Association, an Illinois not-for-profit corporation formed or to be formed for the purpose of administering the Condominium Property pursuant to the Act.

1.3 "Architect" has the meaning set forth in Article XVI hereof.

1.4 "Building" means all improvements, including, but not limited to, the footings, foundations, columns, piles, buildings, improvements, fixtures, equipment, machinery, Facilities, sidewalks, walkways, driveways and landscaping now or hereafter located in, on, under, within or upon the Total Parcel, including all alterations, rebuildings, replacements and additions thereto.

1.5 "Commercial Building" means the portion of the Building located within the Commercial Parcel.

1.6 "Commercial Easement Facilities" means Facilities located in the Residential Property (A) primarily benefiting the Commercial Property or the Owner of the Commercial Property, or (B) necessary for the Owner of the Commercial Property to perform its obligations under Section 6.1 of this Declaration.

1.7 "Commercial Parcel" means that part of the Total Parcel legally described in Exhibit 1.20 hereto.

1.8 "Commercial Property" means the Commercial Parcel improved with the Commercial Building including Commercial Property storage areas in the Parking Garage level.

1.9 "Common Elements" means all portions of the Condominium Property, except the Units.

1.10 "Condominium Declaration" means the Declaration of Condominium Ownership, Easements, Restrictions, Covenants for The Lofts at Village Centre, a Condominium and By-Laws for The Lofts at Village Centre Condominium Association, as the same may be amended from time to time.

1.11 "Condominium Property" means the Residential Property from and after its submission to the Act and so long as it has not been withdrawn from the Act.

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

1.13 "Declarant" has the meaning set forth in the preamble hereof.

1.14 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements dated as of _____, 200_, including all exhibits, appendices, amendments and supplements thereto.

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

1.16 "Depositary" has the meaning set forth in Article XVII hereof.

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

1.18 "Emergency Situation" means (a) a situation impairing or imminently likely to impair structural support or Facilities of the Building; or (b) a situation causing or imminently likely to cause bodily injury to person or substantial physical damage to all or any portion of the Building or any property within or about the Building; or (c) a situation causing or imminently likely to cause substantial economic loss to the Owner of the Commercial Property; or (d) a situation which materially interferes with the beneficial use of any Owner of its respective portion of the Building. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

1.19 "Facilities" means all components, and any replacements or substitutions for the chilled and condenser water, central air handling and fan, temperature control, domestic water, fire suppression, sanitary waste, storm water, electrical, gas, detector and alarm, master satellite antenna, emergency power, telephone, elevator, escalator, lightning protection, kitchen waste and any other systems forming a part of the Building and designated or utilized to furnish utility or any other services to any portion of the Building, including, without limitation, annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, elevator cars, equipment, fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, loading dock machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, tanks, transformers, valves, wirings and the like.

1.20 "First Commercial Mortgage" means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, on the Commercial Property (including, without limitation, any first mortgage or first trust deed which encumbers the Commercial Property and other property), together with any other mortgages or trust deeds (and all amendments, supplements and extensions thereto) on the Commercial Property..

1.21 "First Residential Mortgage" means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, on the Residential Property or any part thereof made by Declarant. The First Residential Mortgage does not include a first mortgage or first trust deed in the nature of a mortgage on a Unit made by a Unit Owner other than Declarant.

1.22 "First Mortgage" means the First Commercial Mortgage or the First Residential Mortgage, as the context requires. "First Mortgages" means the First Commercial Mortgage and the First Residential Mortgage collectively.

1.23 "Maintenance" means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities (except repair and restoration required under Sections 10.2 and 10.3 hereof) and includes the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

1.24 "Owner of the Commercial Property" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, fee simple ownership of the Commercial Property.

1.25 "Owner of the Residential Property" means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, fee simple ownership of the Residential Property. If, and so long as, the Residential Property has been submitted to and remains subject to the provisions of the Act, the Owner of the Residential Property shall mean all of the Unit Owners of the Association collectively, and not individually.

1.26 "Owner" means the Owner of the Commercial Property or the Owner of the Residential Property, as the context requires. "Owners" means the Owner of the Commercial Property and the Owner of the Residential Property. Wherever the word "owner" appears

herein and such word is not capitalized, it shall mean any owner of any portion of the Total Property.

1.27 "Parking Garage" means the underground garage portion of the Building designated or used for parking automobiles and/or motorcycles.

1.28 "Plans" means those architectural and engineering drawings and specifications used for the original construction. The Plans are not "as-built" plans and may be changed or supplemented as construction continues after the date this Declaration is recorded. Therefore, the Plans do not necessarily reflect the exact dimensions or location of each component in or about the Building.

1.29 "Property" means all the land, property and space comprising of the tract of real estate described in this Declaration and/or the Condominium Declaration unless otherwise specified herein. The Property includes all improvements and structures erected, constructed or contained therein or thereon, including any respective buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners.

1.30 "Residential Building" means the portion of the Building located within the Residential Parcel.

1.31 "Residential Easement Facilities" means Facilities located in the Commercial Property (A) primarily benefiting the Residential Property or the Owner of the Residential Property, or (B) necessary for the Owner of the Residential Property to perform its obligations under Section 6.2 of this Declaration.

1.32 "Residential Parcel" means that part of the Total Parcel legally described in Exhibit 1.30 hereto.

1.33 "Residential Property" means the Residential Parcel improved with the Residential Building.

1.34 "Total Parcel" means the parcel of real estate described in Exhibit 1.10 hereto (excluding the Building) and also expressly excluding the garage ramp and connecting tunnel.

1.35 "Total Property" means the Total Parcel improved with the Building.

1.36 "Unit" means a part of the Condominium Property described as a "Unit" in the Condominium Declaration.

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

1.38 "Unit Ownership" means a part of the Condominium Property consisting of one Unit and the individual interest in the Common Elements attributable thereto.

1.39 "Village" means the Village of Mount Prospect, Illinois.

ARTICLE II

EASEMENTS BENEFITING THE RESIDENTIAL PROPERTY

2.1 The following perpetual easements burdening the Commercial Property and benefiting the Residential Property are hereby declared and created:

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

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

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Residential Building encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such easements to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. In no event shall an easement for any encroachment be created in favor of the Residential Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Commercial Property by the Owner of the Commercial Property.

(D) An exclusive easement for the Maintenance of Residential Easement Facilities.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the electric room and common or fire stairways located, from time to time, in the Commercial Property.

(F) A non-exclusive easement over, on, across and through the Commercial Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration, or (ii) during an Emergency Situation, or (iii) to construct and maintain substitute or additional structural support required by Article V hereof.

(G) A non-exclusive easement for the use of any façade cleaning and repair platform and related equipment located on the roof of the Building for the purpose of cleaning the exterior windows and façade of the Residential Building, or any portion thereof, and maintaining, repairing and replacing the exterior of the Residential Building (including façade, walls, windows, screens and the like).

(H) A non-exclusive easement for encroachments if, by reason of the construction of the Building or the subsequent settlement or shifting of the Building, any part of the Commercial Building not originally designed to be located within the Condominium Property,

encroaches or shall hereafter encroach upon any part of the Condominium Property. No such encroachment shall be placed or enlarged deliberately. Such Easement for encroachments shall exist only so long as the encroaching portion of the Commercial Building continues to exist.

2.2 Each Easement created under this Article for ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Property may, from time to time after consultation with the Owner of the Residential Property impose for limited paths of ingress and egress and limited hours of the day or days of the week to prevent any unreasonable interference with the use and operation of the Commercial Building and to assure the reasonable security of the Commercial Building; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement

2.3 Easements provided for, declared or created under Section 2.1 shall be binding upon the Commercial Property and the Owner of the Commercial Property, and all such Easements (i) shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property, and (ii) if and so long as the Residential Property is submitted to the Act, shall be part of the Common Elements.

2.4 The Owner of the Commercial Property shall have the right, at its sole cost and expense, to relocate within its Property any Facilities and Easements which burden its Property and benefit the Residential Property, other than Easements declared or created under Sections 2.1(A) and 2.1(C), so long as such relocation does not have a material adverse effect on the use and operation of the Residential Property.

2.5 The Commercial and Residential Properties are subject to the Easement and Cost Allocation Agreement dated March 31, 2005 by and between The Pinnacle at Village Center LLC (Declarant's former legal name), Mutsuo Nakanishi as co-trustee of the Nakanishi Family Trust dated December 9, 1992 (representing the "Nakanishi Parcel") and Alpha Commercial Properties L.L.C., with the consent of Village Lofts L.L.C. recorded as Document No. 0523835333, and any and all amendments thereto.

ARTICLE III

ASSOCIATION ACTING FOR UNIT OWNERS

So long as the Residential Property is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Condominium Property shall be exercised by the Board of Directors on behalf of the Unit Owners, 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. Any action to enforce rights, obligations, Easements, burdens and benefits under this Declaration on behalf of the Unit Owners or the Association shall be taken solely by its duly authorized directors and officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the Board of Directors of the Condominium Property. All obligations of the Owner of the Residential Property under this Declaration shall be the joint and several obligations of the Association and the Unit Owners.

ARTICLE IV

EASEMENTS BENEFITING THE COMMERCIAL PROPERTY

4.1 The following perpetual easements burdening the Residential Property and benefiting the Commercial Property are hereby declared and created:

(A) A non-exclusive easement in and to all structural members, columns and beams, and any other supporting components located in or constituting a part of the Residential Property for the support of (i) the Commercial Building, and (ii) any Facilities located in the Residential Property with respect to which the Owner of the Commercial Property is granted an easement under this Declaration.

(B) A non-exclusive easement for the use for their intended purposes of all Facilities, including the trash room and trash facilities, at any time located in the Residential Property and connected to the Facilities at any time located in the Commercial Property (and any replacements thereof) which provide or shall be necessary to provide the Commercial Property with any utilities or other services or which may otherwise be necessary to the operation of the Commercial Property.

(C) An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Commercial Property encroaches or shall hereafter encroach upon any part of the Residential Property. Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Building continues to exist. 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 the Residential Property by the Owner of the Residential Property.

(D) An exclusive easement for the Maintenance of the Commercial Easement Facilities.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Residential Property occupied by the shafts housing elevators as shown in the Plans and the adjacent elevator vestibules, including the right to use such elevators, located within the Residential Property.

(F) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through those sections of the common or fire stairways, the Condominium elevator and elevator lobby to access the Commercial Property storage area and corridors located, from time to time, in the Residential Property.

(G) A non-exclusive easement over, on, across and through the Residential Property to the extent reasonably necessary (i) to permit the maintenance, repair, replacement, restoration, construction and/or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or, (ii) during an Emergency Situation, (iii) to install/construct an elevator and/or stairwell from the Commercial Property to the Parking Garage level through the floor of the Commercial Property, or (iv) to construct and maintain substitute or additional structural support required by Article V hereof.

(I) A non-exclusive easement for the use Commercial Property Maintenance and related equipment located on the roof of the Building for the purposes of Maintenance of the Commercial Property or Commercial Property Facilities.

(H) A non-exclusive easement for the use of materials, equipment, grease pipes, grease basins, water pipes, electrical pipes and similar or related equipment over, on, across and through portions of the Residential Property, including the right to access such pipes and equipment, which hereby expressly includes a non-exclusive easement for the installation, use and Maintenance of black iron chase (and equipment), and exhaust rise/chase (and equipment), within or outside of the Residential Building, including the Residential Building roof, to service any tenant or owner in the Commercial Building requiring such facilities; provided, however, that the location, manner of installation and aesthetics of such equipment shall be subject to applicable building and related codes.

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

(J) A non-exclusive easement for (A) use of the roof for the installation, use and Maintenance of antennae, satellite dishes and other communication devices and equipment used from time to time by the Commercial Property Owner and its tenants and (B) on, across, over and through those portions of the Condominium Property (other than the Condominium Units) for the installation, use and Maintenance of wires, cables and conduits connecting such antennae, satellite dishes and other connection devices and equipment to the Commercial Property. Each antenna, satellite dish and communication device and equipment shall be of dimensions and area that comply with Federal Telecommunications law and regulations and shall be installed in accordance with all laws. The Commercial Property Owner's use of such items shall not interfere with other receptions from or transmissions to other Facilities on the roof including, without limitation, antennae, satellite dishes and other communication devices and equipment of the Condominium Property Owner located on such roof. The Owners will work together and cooperate in good faith to achieve the mutual best interests of all Owners regarding this Easement.

(K) A non-exclusive easement to the Commercial Property Owner and its tenants and guests (to the extent such persons use a parking space within the Parking Garage located within the Condominium Building pursuant to a lease, sublease or license or similar agreement or arrangement with a Unit Owner or the Condominium Association) for ingress and egress for persons, vehicles in, over, on, across and through (i) the Parking Garage located

within the Condominium Building, (ii) related stairways for ingress and egress (iii) the elevators and elevator lobby, and (iv) the corridors connecting the elevator lobby with the Commercial Property in order to (a) access and use the Parking Garage and (b) provide access to and from the Parking Garage and the Commercial Property. Further, unless otherwise properly prohibited by the Condominium Declaration, Commercial Property Owner shall have the right to own one or more parking units in the Parking Garage.

(L) A non-exclusive easement for (i) the installation, use and Maintenance of ducts, vents and air conditioning equipment within the Condominium Property and (ii) the use of such venting systems within the Condominium Property to carry exhaust air from the Commercial Property to the roof of the Residential Building.

(M) A non-exclusive easement on, over, across and through the Condominium Property to access and use the Commercial Property trash room and trash facilities within the Commercial Property for the transportation and discarding of refuse and garbage from the Commercial Property

(N) A non-exclusive easement for ingress, egress and access to the Commercial Property's electrical room systems, which are located on the Condominium Property, for the installation, maintenance, repair and/or replacement of electrical systems servicing the Commercial Property.

(O) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the service vestibule identified on the plans adjacent to the two condominium stairwells located within the Residential Property in the rear of the Building to access the Commercial Property.

Easements provided for, declared or created under this Section 4.1 shall be binding upon the Residential Property and the Owner of the Residential Property, and all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property.

4.2 Each Easement created under this Article which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Residential 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 Residential Property, and in order to assure the reasonable security of the Residential Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement including without limitation the easement reserved to Declarant as set forth in Section 4.3.

4.3 Declarant reserves to itself and its successors and assigns, the right to grant, and hereby reserves the right to grant, one or more easements of access, ingress and egress for use of parking garage ramp and its connecting tunnel, as well as those areas of the westerly walls of the Building not improved with Parking Units, together with the right and easement to open up and construct such points of access in said ramp, tunnel and westerly walls as are reasonably required to implement such rights, at the sole cost and expense of the Declarant.

ARTICLE V

STRUCTURAL SUPPORT

5.1 No Owner shall take any action that would adversely affect the structural safety or integrity of the Building as opined by the structural engineer of record for the Building except for concrete floor planks, which opinions shall be determined by the manufacturer thereof

5.2 If, for any reason, the structural support for any portion of the Building is hereafter reduced below the support required to maintain the structural safety or integrity of the Building, the Architect shall review, at the request of either of the Owners, the extent of any such reduction and the need for or adequacy of any such substitute or additional structural support. The Architect shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support.

5.3 If substitute or additional structural support is required in a portion of the Building in which the structural support shall have been reduced, then the Owner responsible for such reduction, if the responsible Owner can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by or approved by the Architect and approved by the other Owner. The responsible Owner shall pay all costs and expenses, including, without limitation, the Architect's and any other architectural fees, in connection with construction of the substitute or additional support. The Owners shall attempt in good faith to determine which Owner is responsible for such reduction. If the Owners are unable, within 30 days after such reduction is discovered, to agree which Owner is responsible for such reduction, the Owners shall request the advice of the Architect. If, after receiving the Architect's advice, the Owners cannot agree which Owner is responsible for such reduction, then such determination shall be made by arbitration pursuant to Article XII hereof.

5.4 In the event that the Owner determined responsible for the reduction in structural support fails to commence the construction of substitute or additional support within a reasonable time under the circumstances, or having commenced such construction fails to proceed diligently to its completion, the Creditor Owner shall have the right to complete the construction of such substitute or additional support at the expense of the Defaulting Owner, and all costs and expenses incurred by Creditor Owner shall be due from the Defaulting Owner on demand.

5.5 If delay in constructing substitute or additional support would endanger the structural safety or integrity of the Building, then, without regard to which Owner shall be determined responsible for the reduction, the Owner of the portion of the Building in which the reduction shall have occurred or is then occurring shall, upon not less than 10 days advance written notice to the other Owner (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; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any required substitute or additional support. If the responsible Owner cannot be determined, or if both Owners are responsible, or if the reduction in structural support results from a defect in the original construction or design of the Building, an act of God or force majeure, then the Owners shall share the cost of providing substitute or additional structural support, including, without limitation, any fees of the Architect, in the manner agreed to by the Owners. If the Owners cannot agree, the Owners shall request the

advice of the Architect. If, after receiving the Architect's advice, the Owners cannot agree on the sharing of such costs, then, such determination shall be made by arbitration pursuant to Article XII hereof. The foregoing shall not be deemed to limit any rights any of the Owners may have against third parties.

ARTICLE VI

BUILDING SERVICES

6.1 The Owner of the Residential Property shall furnish or cause to be furnished the following services to the Owner of the Commercial Property when, as and if required:

(A) Building Security. Continuous security service at the entrance of the Condominium lobby and elevator and the monitoring of that portion of the Building, including maintenance of any interior surveillance camera and any other security devices and equipment, if any, all at the sole cost and expense of the Owner the Condominium Property.

(B) Village Water and Main Sewer. Cold water and main sewer service from the Village and required by the Owner of the Commercial Property from the Village main through the water supply system located in the Building ("Building Water Supply Systems"). In the event that Commercial Building is separately sub-metered for domestic cold water use, the Commercial Property Owner shall reimburse the Association only for its actual usage of Village cold water and main sewer services.

(C) Exterior Walls/Façade of the Building. Maintenance, repair and replacement of the building's façade, excluding any windows making up a portion of the Commercial Property.

(D) Fire Alarm and Emergency Telephone Systems. Maintenance of Building's Facilities that monitor the Residential Building's fire alarm and emergency telephone systems. To the extent this item is separately assessed to each Owner, each Owner is responsible for its respective systems.

(E) Fire Suppression System. Maintenance of the fire suppression system for the Residential Building. To the extent this item is separately assessed to each Owner, each Owner is responsible for its respective systems.

(F) Roof. Maintenance of the roof of the Building, including the storm drains located on the roof.

(G) Sanitary Waste Systems. Maintenance, repair and replacement of any portion of the Sanitary Waste Systems serving both the Commercial Property and the Condominium Property

(H) Condominium Property Trash Room. Maintenance of Condominium Property trash room and its related facilities, compactor room, if applicable, and trash removal service, for compacted trash.

6.2 The Owner of the Commercial Property shall furnish or cause to be furnished the following services to the Owner of the Residential Property when, as and if required:

A. Street Level Sidewalks and Snow Removal in front of Commercial Property. Maintenance of street level sidewalks and snow removal shall be controlled by the Village. The costs associated thereof shall be paid the Commercial Property Owner to the Village, with reimbursement by the Residential Property Owner.

B. Exterior Areas. Maintenance, repair and replacement of the following areas: exterior Building lighting [except individual patio or balcony lighting appurtenant to a Unit in the Condominium Building], rear parking lot, landscaping in the rear parking lot, and rear parking lot lighting unless a separate maintenance agreement for said areas is recorded against the property (see Article XX).

C. Grease Line/Trap. Maintenance, repair and replacement of the Commercial Property grease line/trap, which exclusively serves the Commercial Property, if any.

D. Fire Alarm and Emergency Telephone Systems. Maintenance of Building's Facilities, which monitor the Commercial Building's fire alarm and emergency telephone systems. To the extent this item is separately assessed to each Owner, each Owner is responsible for its respective systems.

E. Fire Suppression System. Maintenance of the fire suppression system for the Commercial Building. To the extent this item is separately assessed to each Owner, each Owner is responsible for its respective systems.

F. Commercial Property Trash Room. Maintenance of Commercial Property trash room and its related facilities, compactor room, if applicable, and trash removal service, for compacted trash.

6.3 Each Owner shall make a good-faith effort to operate its Facilities and furnish all services as required under this Article in a manner which will provide each Owner with comfortable occupancy and enjoyment of its respective portion of the Building for its intended use as first-class commercial or residential property; but in no event shall an Owner be obligated to use more than reasonable diligence in performing the services required of such Owner under this Article, or be liable for consequential damages for failure to perform hereunder or 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 reserves the right to curtail or halt the performance of any service hereunder at any reasonable time and upon reasonable notice to the extent reasonably necessary to perform Maintenance or in an Emergency Situation.

6.4 Submission of statement(s) for services rendered pursuant to this Article, provisions for payment thereof, and provisions for additional payments incurred in connection with such services and the operation, maintenance, repair and replacement of shared Facilities shall be made as follows:

A. Allocation of Costs.

1. The Owner of the Commercial Property shall bear twelve percent (12%) and the Owner of the Residential Property shall bear eighty-eight percent (88%), of the total costs of the services to be furnished, and/or caused to be furnished, the items described in Sections 6.1 (B) [unless the Commercial Building is separately sub-metered, in which case, each

party shall only be responsible for its actual usage of Village water and main sewer], (C), (F) and (G);

II. The Owner of the Residential Property shall bear fifty percent (50%) and the Owner of the Commercial Property shall bear fifty percent (50%), of the total costs of the services to be furnished, and/or caused to be furnished, the items described in Sections 6.2 (A) and (B) to the extent an area is not exclusively devoted to Commercial Property uses such as outdoor seating and patios.

III. The respective Owner of each Property shall pay one hundred percent (100%) of the total costs of the services to be furnished, and/or cause to be furnished, the items described in Sections 6.1 (A), (D), (E), (H) and Sections 6.2 (C) through (F) hereof.

B. Submission and Payment of Statements. The respective Owner of either the Residential Property or Commercial Property who performs maintenance and/or provides services per Sections 6.1 and 6.2 of this Declaration, shall submit statements to the other Owner on or about quarterly, but in no case, more frequently than on the first day of each month for services rendered pursuant to Sections 6.1 and 6.2 hereof, and such statement shall be paid by the respective Owner within thirty (30) days of its receipt.

6.5 If any Owner shall fail to (i) perform the services required to be performed by it pursuant to this Article (except when such failure is caused by any other Owner, unavoidable delay), or (ii) perform its obligations under Section 10.1 hereof, and such failure shall continue for a period of 30 days after written notice thereof to the defaulting Owner ("Defaulting Owner") from the other Owner, such other Owner shall have the right to perform the same until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation.

6.6 If, at any time a Defaulting Owner fails to pay to a Creditor Owner any sum of money payable to such Creditor Owner within 30 days after receipt of written notice from such Creditor Owner demanding payment of said sum of money, then, such Creditor Owner may; in addition to any other rights and remedies hereunder, pay the amount due from the Defaulting Owner and record a lien against the interest of the Defaulting Owner in accordance with this Declaration; provided, however, that if the Defaulting Owner in good faith disputes its obligation to pay said sum of money, pays the undisputed portion of said sum and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then, the Creditor Owner may not file said lien against the Defaulting Owner's interest unless and until it shall be finally determined by arbitration in accordance with Article XII hereof or by a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

6.7 An Owner obligated to perform Maintenance of Facilities shall, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better and providing substantially the same quality of service or better.

6.8 If at any time the actual allocation of cost of Maintenance based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then, for such period when the usage data from meters is unavailable, the Owner performing such Maintenance shall make such

reasonable determination of costs based on usage, using such experts or systems as such Owner may consider helpful to achieve an estimate of usage. Such Owner shall notify the other Owner in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a notice or statement relating to such Maintenance.

If, within 30 days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that such method of estimating usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties; provided, however, if an Owner receiving such notice, in good faith, disputes that the method of estimating usage has been determined reasonably, he shall so notify the other Owner. If the parties fail to agree concerning the method of estimating usage within 30 days after receipt of the disputing Owner's notice, then, the Owners shall submit the question to the Architect for its determination, which determination shall be final and binding on the Owners and the holders of the First Mortgages.

6.9 In addition to the foregoing provisions in this Article, the Owner of the Commercial Property shall be solely responsible for all of the costs of the maintenance, repair and replacement of any awnings, doors, and windows adjacent to and serving exclusively the Commercial Property, and other costs directly attributable to the Commercial Property.

6.10 The Commercial Property tenants shall be responsible for their own utilities including electricity, but expressly excluding Village water and main sewer, which must be provided by the Residential Property.

6.11 Each Owner shall be responsible for selecting competent, licensed (as required) and bonded service contractors for the services to be rendered pursuant to Sections 6.1 and 6.2 herein. Should either Owner decide in its sole discretion to change any such contractor for the services it is required to provide for the benefit of both Owners, said Owner shall tender to the other Owner thirty (30) days' prior written notice of said change, and the Owner receiving notice shall have the right, without obligation on the Owner seeking to make said change, to submit the name(s) of additional/alternative contractors for the Owner seeking to make the change to consider.

ARTICLE VII

COMPLIANCE WITH LAWS; REMOVAL OF LIENS

7.1 The Owners shall each comply with all laws, codes, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, Village of Mount Prospect and any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Total Parcel, the Building or any portion thereof, if non-compliance would subject the other Owner or any of the holders of the First Mortgages to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Building itself or would jeopardize the other Owner's right to occupy or utilize beneficially their respective portion or portions of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner.

7.2 The Owners shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Total Property or any portion thereof and the requirements of any insurance policy affecting insurance coverage on the other Owner's portion of the Total Property, if non-compliance by it with respect to its portion of the Total

Property or any portion thereof would (i) increase the premiums of any policy insurance maintained by the other Owner or the premiums of any policy of insurance maintained by both Owners, or (ii) render the other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of the Total Property; provided, that this paragraph shall not apply to insurance policies of individual Unit Owners; 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 the other Owner's portion of the Total Property, the other Owner shall be liable for the cost and expense of such compliance. If at any time an Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect the other Owner, then, any Creditor Owner may given written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and, if upon expiration of 10 days after the receipt of such notice, any such cure of the non-compliance 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.

7.3 Each Owner shall remove, within 30 days after the filing thereof, any mechanics', materialmen's or any other like lien on the other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement created hereunder or services to be furnished pursuant to Article VI hereof arising by reason of any work or materials ordered by any act taken, suffered or omitted by the Owner. In the event the Defaulting Owner fails to remove any such lien within such 30-day period, the Creditor Owner may take such action as such 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. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien so long as within said 30-day period, such lien cannot be foreclosed and 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 of its intention to contest the validity or amount of such lien, and (B) shall deliver to the Creditor Owner either: (i) cash or surety bond from a responsible surety company acceptable to the Creditor Owner in an amount equal to 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.

7.4 Each Owner (hereinafter, in this Section, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter, in this Section, the "Indemnitee") from and against any and all claims against Indemnitees for losses, liabilities (civil or criminal), damages, judgments, costs and expenses, and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental or quasi-governmental authority, other than the Indemnitees, 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 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, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably acceptable to the Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to the Indemnitee.

ARTICLE VIII

REAL ESTATE TAXES

8.1 Within one year from the Recording date of this Declaration, the Owners agree to file a tax division petition with the Assessor of Cook County, Illinois (the "Assessor") to obtain separate real estate tax parcel identification numbers and separate real estate tax bills for their respective portions of the Total Property, if such a petition has not heretofore been filed. When separate real estate tax bills are received, the Owner of the Commercial Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Commercial Property, and the Owner of Residential Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Residential Property. Each Unit Owner shall pay the real estate taxes, special assessments, and any and all other taxes and assessments of every kind and nature levied upon his Unit Ownership.

8.2 (A) At any time that the Commercial Property and the Residential Property are not separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied or with respect to the Total Property. Each Owner's portion of such taxes and assessments shall be determined by the Owner of the Commercial Property in a fair and reasonable manner.

(B) Upon receipt of the real estate tax bills for the Total Property, the Owner of the Commercial Property shall forward a copy of same to the Owner of the Residential Property, together with the Owner of the Commercial Property's determination of their respective shares of such tax bills. The Owner of the Residential Property shall deliver to the Owner of the Commercial Property a cashier's check made payable to the Cook County Collector for its allocable share, as determined by the Owner of the Commercial Property, of the tax bills within five (5) business days after demand is made therefor by the Owner of the Commercial Property. The Owner of the Commercial Property shall forward such check with the Owner of the Commercial Property's share of the tax bills to the Cook County Collector and shall forward a copy of the receipt for same to the Owner of the Residential Property when it is received.

(C) If the Owner of the Commercial Property attempts to obtain a reduction of the assessed valuation upon the Total Property or takes other action for the purpose of reducing taxes thereon with respect to any period prior to the time that the Commercial Property and the Residential Property are separately assessed and taxed, the Owner of the Residential Property shall cooperate with the Owner of the Commercial Property in such attempt and shall share in the costs incurred in proportion to its share of the real estate taxes. Any tax refund received as a result of such action shall be apportioned between the Owners in accordance with their respective portions of the real estate taxes as has been determined by the Owner of the Commercial Property pursuant to Section 8.2(A). Nothing contained herein shall affect the independent right of each Owner to protest taxes and other charges to the extent the same affect only such Owner's portion of the Total Property.

8.3 If, prior to the time separate tax bills are obtained, either Owner shall fail to pay any tax or other charge, or share thereon, which is due and which such Owner is obligated to pay pursuant to this Article, and if such unpaid tax or charge is a lien or encumbrance on the portion of the Total Property owned by the other Owner, or if any lawful authority would have the right to sell or otherwise foreclose against the portion of the Total Property owned by the other Owner or extinguish any Easement benefiting the other Owner by reason of such nonpayment, or subjects he other Owner to personal liability for the same, then the Creditor Owner may, after 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 amounts accrued thereon.

ARTICLE IX

INSURANCE

9.1 Each Owner shall procure and maintain the following insurance:

(A) (i) The Owner of the Residential Property shall keep the Residential Building insured for the coverage required by the Illinois Condominium Property Act ("Act") for an amount not less than 100% of the "Full Insurable Replacement Cost" (as hereinafter defined) (or such greater amount as may be necessary to avoid co-insurance) thereof. Insurance carried by the Owner of the Residential Property hereunder shall also include insurance of the Residential Easement Facilities, which insurance shall be primary coverage with respect to any loss to the Residential Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which the Residential Easement Facilities are located being excess coverage, and the Owners shall obtain appropriate endorsements to prevent the insurance companies from raising the claim or defense of co-insurance or other like defenses or like claims adverse to the Owner of the Residential Property.

(ii) The Owner of the Commercial Property shall keep the Commercial Building 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 90% of the Full Insurable Replacement Cost thereof (or such greater amounts as may be necessary to avoid co-insurance). Such coverage of the Commercial Building shall include coverage for loss of rental income caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts as may be carried by prudent owners of first-class commercial buildings in the Village of Mount Prospect, Illinois. Insurance carried by the Owner of the Commercial Building hereunder shall also include insurance of the Commercial Easement Facilities, which insurance shall be primary coverage with respect to any loss to the Commercial Easement Facilities, with any insurance carried by the owner of the portion of the Building in which the Commercial Easement Facilities are located being excess coverage, and the Owners shall obtain appropriate endorsements to prevent the insurance companies from raising the claim or defense of co-insurance or other like defenses or like claims adverse to the Owner of the Commercial Property.

(iii) The term "Full Insurable Replacement Cost" shall mean actual replacement cost (exclusive of cost of excavation, foundations and footings below the lowest basement floor) and shall be determined from time to time by an appraisal

prepared by an independent appraiser chosen by the Owner of the Commercial Building, the cost of such appraisal to be shared by the Owners proportionately based on the Full Insurable Replacement Cost of their respective portions of the Building. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause in accordance with such appraisal.

(B) Each Owner shall maintain comprehensive general liability insurance with broad form extensions covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about (i) the portion of the Total Property owned by such Owner, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), or (ii) any other portion of the Total Property as a result of the actions of such Owner or its lessees, agents or employees. Such insurance shall be primary coverage as to claims for injury or damage resulting from the acts or failure to act of an Owner, with any insurance carried by the other Owner being excess coverage. Such insurance shall be in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class commercial or residential buildings (as the case may be) in the Village of Mount Prospect, Illinois, but in all events with limits of not less than $1,000,000 combined single limit for personal and bodily injury or property damage with an additional $5,000,000 umbrella coverage; and

(A) Each Owner shall insure its boiler and machinery risks, on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus owned by such Owner, consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment and piping and ducts on a repair or replacement basis for not less than ninety percent (90%) of the Full Insurable Replacement Cost thereof (or such greater amount as may be necessary to avoid co-insurance), and also providing coverage for loss of income caused by business interruption or extra expense incurred to reduce such loss of income or for loss of use arising from a failure of the Building equipment, machinery and apparatus owned by such Owner or the other Owners, in such amounts as may be carried by prudent owners of first-class commercial and residential buildings in the Village of Mount Prospect, Illinois. Such insurance carried by each Owner shall also include insurance of such Owner's Easement Facilities, which insurance shall be primary coverage with respect to any loss to such Owner's Easement Facilities, with any insurance carried by the Owner of the portion of the Building in which such Easement Facilities are located being excess coverage.

9.2 Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized rating service. Insurance policies required by Sections 9.1(A) and 9.1(C) shall (a) be purchased from a single insurance company or group of companies designated by the Owner of the Commercial Property and shall contain the same terms and conditions of coverage and policy wording, and (b) provide for the adjustment of claims with the insurer by the Owner who obtained such policy and, if required by the terms of such Owner's First Mortgage, the holder of such First Mortgage. So long as the Residential Property remains subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the Condominium Declaration as being responsible for such insurance.

9.3 Each policy described in Section 9.1 hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under such policy; (ii) shall insure as named insured and additional named insureds, as the case may be, the Owner of the Commercial Property and the Owner of the Residential Property, together with such affiliates of such owners as any of them may designate from time to time, all as their interests may appear; provided, however, that so long as the Residential Property shall remain submitted to the Act, the Association and not the individual Unit Owners of the Residential Property shall be insured as a named insured; (iii) shall provide, except for liability insurance described in Section 9.1(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, except for (a) insurance for loss of rental income or loss of income covered by business interruption or extra expense incurred to reduce such loss of income, and (b) liability insurance required by Section 9.1(B), that all losses payable thereunder shall be paid to the Depositary in accordance with the terms of Article XVII hereof; (v) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all insureds thereunder and to the holders of the First Mortgages; and (vi) shall include a standard mortgagee endorsement or loss payable clause in favor of each of the holders of the First Mortgages in form satisfactory to it.

9.4 Limits of liability or types of insurance specified in this Article or carried by the Owners shall be reviewed by the Owners no less often than annually at least 30 days before the expiration of each policy 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. Initially, deductible amounts for insurance required under Sections 9.1(A), 9.1(B) and 9.1(C) shall not exceed $25,000.00. 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, at either Owner's election, 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; provided that the Owner of the Commercial Property shall have the right, in its reasonable discretion, to increase, from time to time, the limits of liability for the insurance required under Section 9.1(B).

9.5 Copies of all insurance policies, original certificates of insurance evidencing such policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner and to the holders of the First Mortgages at the time of the Conveyances and at least 20 days prior to the expiration date of any such expiring insurance policy.

9.6 Should an Owner fail to provide and maintain any policy of insurance required under this Article or pay its share of the premiums or other costs for any joint policies, then the

other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within 10 days after the Creditor Owner's written demand therefor.

9.7 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 or liability or recovery contained elsewhere in this Declaration, each of the Owners, for itself and for each party claiming under, by or through such Owner, hereby waives all claims for recovery from the other Owner for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

ARTICLE X

MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

10.1 Except as expressly provided in Sections 6.1 and 6.2 hereof relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article in the event of fire or other casualty, and without limiting or diminishing each Owner's obligations under Article V, each Owner shall, at its sole cost and expense, keep its respective Property, its Easement Facilities and fixtures, equipment and appurtenances therein (including, without limitation, its portion of the Building façade and its kitchen waste interceptors), in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise, and each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

10.2 If the Building is damaged by fire or other casualty and if such damage occurs in, on, under, within, upon or about (a) the Commercial Building only or (b) the Residential Building only, and does not in each instance affect the Easement Facilities of any other portion of the Building, then any such damage shall be repaired and restored by the Owner of the portion of the Building 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 the nature of the damage is such that it does not fall within the categories set forth in clauses (a) or (b) above, then the provision set forth in Section 10.3 with respect to the selection of a contractor and the preparation of the plans and specifications shall be applicable. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of such damage which adversely and materially affects an Easement in favor of any other Owner or services to be furnished any other Owner under Article VI 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 ten (10) 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.

10.3 If the Building is damaged by fire or other casualty and if the provisions of Section 10.2 are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in Section 10.2 then the repair or restoration of such damage shall be the joint responsibility of the Owners. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of high-rise structures similar to the Building jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by arbitration pursuant to Article XII hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners otherwise agree, in accordance with instructions given by the Owners. Such plans and specifications shall provide for the Building to be rebuilt as nearly as commercially practicable to the Building as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree. The Architect shall furnish to each of the Owners a set of the plans and specifications, which it has prepared or caused to be prepared. Unless the Owners otherwise agree any contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owner in whose portion of the Building such repair and restoration is being performed, as such repair and restoration progresses, to disburse in accordance with Article XVIII hereof, the insurance proceeds held by the Depositary and any other monies deposited with the Depositary pursuant to Section 10.4 hereof for application against the cost and expense of any such repair and restoration.

10.4 If the cost and expense of performing any repair and restoration provided for in Section 10.3 hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there is no insurance proceeds) shall be borne by the Owners in proportion to the cost and expense of repairing to their former condition their respective portions of the Building; provided, however, that to the extent such excess cost and expense results from the failure of an Owner to maintain the amount of insurance required under Section 9.1 hereof, such Owner shall bear such portion of such excess cost and expense.

10.5 In any instance of repair or restoration pursuant to Sections 10.2, 10.3 or 10.4 hereof, either 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 theretofore has 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 (plus any applicable deductible), then either Owner may at any time give notice to the other Owner

demanding that the Owner deposit with the Depositary the amount of such excess cost and expense attributable to the Owner pursuant to this Article.

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, the Owner may deliver to the Depositary security for payment of its share reasonably acceptable to the other Owner and the Depositary. 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 an irrevocable loan commitment, satisfactory to the other Owner issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depositary to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost and expenses of the work. If an Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section, or fails to deliver the security provided for herein within 10 business days after receipt of the other Owner's written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse such Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

10.6 Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by reason of such Owner's insurance bears to the total insurance proceeds made available by the insurer for the repair and restoration, or if the insurance is provided by a single policy covering the Building, then the ratio of insurance proceeds attributed to such Owner's portion of the Building by the insurer to the total insurance proceeds made available by the insurer for the repair and restoration.

10.7 If the Building is destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Building, subject to the written approval of the holders of the First Mortgages, then the Building 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 Building. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner's insurance to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Building, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building to the total insurance proceeds paid by reason of such damage. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 10.3, 10.4, 10.5 and 10.8 hereof are applicable except that demolition, and not construction, shall be performed. In the event the Owners agree not to rebuild the Building, subject to the written approval of the holders of the First Mortgages, they may also make provision (i) for sale of the Total Property by the Owners and distribution of sale proceeds, or (ii) for ownership of the Total Property by the Owners as tenants in common, with the right to sue for partition (but for purposes of such partition the Total Property shall be deemed not susceptible of division), all subject to the written approval of the holders of the First Mortgages.

10.8 For purposes of this Article, 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.

10.9 If an Owner damages the Property, Facilities, fixtures, equipment, appurtenances of the other Owner or the garage ramp and connecting tunnel, then any such damage shall be repaired and restored by the Owner that caused the damage in as timely manner as practicable under the circumstances. If said Owner fails to repair said damage, then said Owner is subject to the remedies provided herein this document.

ARTICLE XI

LIENS, DEBTS, INTEREST AND REMEDIES

11.1 If at any time, an Owner fails within the time period set forth for payment, or if no time period is set forth, then within 10 business days after notice or demand to such Owner to pay to the other Owner any sum of money due any such 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, such Creditor Owner shall have a lien against the Defaulting Owner's interest in the Total Property and a lien against any insurance proceeds payable to 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. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section: (i) shall be subject and subordinate to the lien of any mortgage, trust deed or other encumbrance on the Defaulting Owner's interest in the Total Property at the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said mortgage, trust deed or other encumbrance, and (ii) are subject to termination and defeat as provided in Section 11.4 below.

11.2 To the fullest extent permitted by law, the provisions of Article X of this Declaration shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit: (i) the obligation of the Unit Owners to repair or restore the Condominium Property, or (ii) the use of insurance proceeds for repair and restoration of the Condominium Property. In the event of fire or other casualty or act of God or disaster causing damage to the Condominium Property which would entitle the Owner of the Residential Property, 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 Owner of the Commercial Property shall have a lien on the Condominium Property and any insurance proceeds payable for loss or damage to such portion of the Building under insurance policies carried pursuant to Article IX hereof, in an amount necessary so that the Owner of the Commercial Property shall have sufficient proceeds to demolish or repair and restore the Building to a condition so as adequately to assure:

(A) the structural integrity and safety of the Building;

(B) the continuous and efficient operation of all Building electrical, utility, mechanical, plumbing and other systems serving the Commercial Building;

(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 over the Total Property; and

(D) the architectural unity and aesthetic appearance of the restored Building as first-class property.

The lien created by this Section shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on the Condominium Property or any portion thereof. Such lien shall arise immediately upon the recording of a notice by the Owner of the Commercial Property with the Recorder following the occurrence of a fire or other casualty or act of God or disaster stating that it is a lien created by this Section of this Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the Owner of the Commercial Property, or the Owner of the Residential Property shall have repaired and restored the Condominium Property 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 y statute or at law or in equity.

11.3 Subject to the limitations set forth in Article XV hereof, and without limiting any equitable remedies to which the Owner of the Commercial Property may be entitled, so long as the Residential Property remains subject to the provisions of the Act, no Unit Owner shall be personally liable for all or any part of any claim against the Owner of the Residential Property in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit Ownership as set forth in the Condominium Declaration. Upon payment of such amount for which a Unit Owner may be 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 Owner of the Commercial Property 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.

11.4 No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this Article other than a divestiture resulting from a foreclosure of a mortgage lien that is superior to the lien arising pursuant to this Article.

11.5 The holder of a mortgage or trust deed on all or any portion of the Commercial Property or the Residential Property shall have the right to an assignment of any lien affecting the property secured by its mortgage or trust deed upon payment of the amount accrued by such lien and shall in the event of said payment or satisfaction be subrogated to such other lien and any additional security held by the holder thereof. Such holder of a mortgage or trust deed may at any time give to the holder of the lien a written notice of its election to pay such amount. On a date not less than ten (10) and not more than thirty (30) days after such notice of election, the holder of a mortgage or trust deed shall pay the full amount of such lien, and the holder of the lien shall deliver to the holder of a mortgage or trust deed an instrument in recordable form assigning the lien together with the debt secured thereby.

11.6 Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full,

at a rate per annum equal to the lesser of: (a) the floating rate which is equal to four percent (4%) in excess of the rate of interest from time to time announced by Bank One, N.A. in Chicago, Illinois, as its prime rate, reference rate or corporate base rate, and (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a prime rate, reference rate or corporate base rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

11.7 Subject to the limitations set forth in Article XV hereof, the rights and remedies of an Owner provided for in this Article 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. Either 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 of remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

11.9 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; provided, however, that if prior to expiration of the period in which such action must be commenced, any holder of a First Mortgage is diligently proceeding to foreclose the First Mortgage, then such period in which an action by the Owner of the portion of the Total Property encumbered by such First Mortgage must be commenced shall be further extended for such additional time as may reasonably be necessary in order for the holder of such First Mortgage to obtain possession of such portion of the Total Property.

11.10 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.

ARTICLE XII

ARBITRATION

12.1 The following matters shall be submitted for arbitration to the American Arbitration Association (the "AAA") pursuant and subject to the provisions of this Article:

(A) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding $100,000 (in 2005 equivalent dollars) which shall not be resolved within sixty (60) days after same have arisen; and

(B) All other matters which are required under the provisions of this Declaration to be submitted for, or determined by, arbitration.

Any such dispute, claim, controversy or matter is referred to herein as a "Matter". Arbitration of any Matter shall be initiated by either Owner making a written demand therefor by giving written notice thereof to the other Owner and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois and shall be conducted and completed in an expeditious manner and without delay. The holders of the First Mortgages shall be party to any arbitration of a Matter involving a matter that requires the consent or approval of the holders of the First Mortgages hereunder.

12.2 Unless otherwise agreed to in writing by the parties to the arbitration, within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate one arbitrator to resolve the Matter. If the parties fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrator shall be experienced as to the design, construction and/or operations, as the Matter requires, of multi-use structures similar to the Building. Except where contrary to the provisions set forth in this Declaration, the rules of the AAA for commercial arbitration shall apply to the arbitration of any Matter. During the twenty (20)-day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

12.3 The arbitrator shall commence hearings within sixty (60) days of selection, unless the Owners or the arbitrator agree upon an expedited or delayed schedule of hearings. Prior to the hearings either Owner may send out requests to compel document production from the other Owner. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrator in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Declaration. Subject to the other terms hereof, if the Owner fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitration panel may hear and determine the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner except that each Owner shall be responsible for its own expenses.

12.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article. The obligation of the Owners to continue performance and make payments despite the existence of any arbitration hereunder shall be enforceable by any party to the Matter by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any matter is resolved as provided in this Article.

12.5 With respect to any Matter subject to arbitration under this Article, it is agreed that the arbitration provisions of this Article shall be the sole remedy of the Owners under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article or with any person not named

or described herein, provided that any arbitration proceeding initiated under the terms of this Article may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the Owners, and the holders of the First Mortgages and judgment thereon shall be entered by any court having jurisdiction.

ARTICLE XIII

UNAVOIDABLE DELAYS

The Owners shall diligently perform their respective obligations set forth herein. 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 directly 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 ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Owner unable to perform (the "Non-Performing Owner") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within 10 days after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time, upon written request of the other Owners, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

ARTICLE XIV

CONDEMNATION

14.1 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 (the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this Article.

14.2 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 including Residential or Commercial Easement Facilities or affecting services described in Sections 6.1 or 6.2 hereof, each of the Owner of the Commercial Property and the Residential Property 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 according to the law then applicable.

14.3 In the event of a taking (other than a temporary taking) of a part of the Commercial Property only, or the Residential Property only (not including any Easement Facilities of any other portion of the Total Property or affecting services described in Sections 6.1 or 6.2 hereof, except those having minimal or incidental effect), then, 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 Building 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 XVIII hereof and to retain any excess not required for such repair and restoration; provided, however, that the right of the Owner of the Commercial Property to receive such excess, if any, shall be subject to the rights of the holders of the First Commercial Mortgage under the First Commercial Mortgage with respect to any such excess Award, and the right of the Owner of the Residential Property to receive such excess, if any, shall be subject to the rights of the holders of the First Residential Mortgage under the First Residential Mortgage with respect to any such excess Award.

14.4 In the event of a taking other than (A) a temporary taking described in Section 14.2 hereof, (b) a taking described in Section 14.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 14.6 hereof, the Owners shall jointly cooperate to repair and restore the remainder of the Building in accordance with plans and specifications jointly approved by the Owners and the holders of the First Mortgages. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of high-rise structures similar to the Building jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect.

If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by arbitration pursuant to Article XII hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree in accordance with instructions given by the Owners, and subject to the approval of the holders of the First Mortgages. Such plans and specifications shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole with such changes in the Building as shall be required by reason of such taking. If as a result of such taking, any Easements or covenants under this 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 Building services comparable, to the extent commercially practicable, to Easements created under Articles II, and IV hereof and for the furnishing of services under Article VI hereof. The Architect shall furnish to each of the Owners and the holders of the First Mortgages a set for such plans and specifications for their approval. Unless the Owners otherwise agree, the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owner in whose portion of the Total Property such repair and restoration is being performed and the Owner of the Commercial Property and the holders of the First Commercial Mortgage if the Commercial Building or any of the Commercial Easements Facilities are involved, and the holder of the First Residential Mortgage if the Residential Building or any of the Residential Easement Facilities are involved, as such repair and restoration progresses, to disburse, in accordance with Article XVIII hereof, any Award paid to the Depositary for application to the cost and expense of such repair and restoration.

14.5 The Award for any taking described in Section 14.4 shall first be used to pay for the repair and restoration. Any excess of the Award over the cost of repair and restoration shall t hen be allocated to each Owner in the same ratio as the apportionment of the Award to parties

with an interest in such Owner's portion of the Total Property in any judicial or administrative proceedings n connection with the taking, bears to the apportionment of the Award to parties with an interest in the other Owner's portions of the Total Property; provided, however, that the right of the Owner of the Commercial Property to receive such excess shall be subject to the rights of the holder of the First Commercial Mortgage under the First Commercial Mortgage with respect to any such excess, and the right of the Owner of the Residential Property to receive such excess shall be subject to the rights of the holder of the First Residential Mortgage under the First Residential Mortgage with respect to any such excess.

14.6 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 Owner of the Commercial Property and the Owner of the Residential Property in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to such owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to such Owners in accordance with said apportionment; provided, however, that the right of the Owner of the Commercial Property to receive any Award and payment shall be subject to the rights of the holder of the First Commercial Mortgage under the First Commercial Mortgage with respect to any such Award and payment, and the rights of the Owner of the Residential Property to receive any Award and payment shall be subject to the rights of the holder of the First Residential Mortgage under the First Residential Mortgage with respect to any such Award and payment.

14.7 To the fullest extent permitted by law, the provisions of this Article shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligation of the Unit Owners to repair or restore the Condominium Property in the event of a taking or (ii) use of the Award as provided in this Article.

ARTICLE XV

LIMITATION OF LIABILITY

Notwithstanding anything contained in this Declaration to the contrary, no judgment or decree enforcing obligations under this Declaration against any Owner of any portion of the Total Property shall be subject to execution on, or be a lien on any assets of, such Owner other than that Owner's portion, estate or interest in the Total Property or insurance or condemnation proceeds relating thereto.

ARTICLE XVI

ARCHITECT

16.1 The Owners shall jointly appoint a reputable firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) ("Architect") experienced in the design and operation of structures similar to the Building to serve under, pursuant and subject to, the terms and provisions of this Declaration. The Owners hereby agree that unless and until the Architect is replaced or its resigns in accordance with the provisions of this Section 16.1, the Architect shall initially be Haylock Design, Inc. Either Owner may cause any Architect to be replaced by an Architect meeting the above-stated qualifications if it demonstrates to the other Owner that such then-serving Architect has failed to perform this duties hereunder diligently or competently. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owner 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. If, in the opinion of the Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 16.1, the Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing 15 days after receipt of such notice from the Owner desiring to replace the Architect. If, within 10 days after receipt of the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be submitted to arbitration pursuant to Article XII hereof. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not be binding upon the Architect for any purpose other than the purpose of determining whether said Architect shall continue to serve hereunder. Any Architect acting hereunder shall have the right to resign at any time upon not less than 90 days prior written notice to the Owners.

16.2 In any instance when the Architect serving pursuant to Section 16.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, either 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 Owner. 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, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence.

16.3 If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, and if the Architect being replaced has not been removed by reason of any failure to perform diligently or competently any services hereunder, then, if the Owners so choose, the Architect being replaced shall continue to act as Architect with respect, and only with respect, to such pending dispute or matter or the completion of plans and specifications or supervision of any such work.

16.4 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 its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Building 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 10 days after receipt of any invoice therefor from the Architect, then the other Owner may pay the same and the Defaulting Owner shall, within 10 days after written demand, reimburse the Creditor Owner for any such payment, with interest thereon as herein provided.

ARTICLE XVII

DEPOSITARY

17.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee hereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary appointed hereunder shall be the holder of the First Commercial Mortgage, or if no such holder of the First Commercial Mortgage then exists, or if such holder of the First Commercial Mortgage is not permitted by law to act as Depositary or is unwilling to so act, then the Depositary shall be appointed by the Owner of the Commercial Property and shall be one of the then 5 largest banks or trust companies (measured in terms of assets) with principal offices in Chicago, Illinois, or shall be Chicago Title and Trust Company, or a comparable title insurer with trust capacities with offices in Chicago, Illinois. The Depositary shall be entitled to receive from the Owners in their allocable share of the Depositary's reasonable fees and expenses for acting as Depositary, and may retain said fees and expenses, free of trust, from monies held by it. Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment and setting forth the terms and provisions of this Article.

17.2 The Depositary shall not be liable or accountable for any action taken or disbursement made on good faith by the Depositary, except that arising from its own negligence or willful misconduct. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depositary shall have been given 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.

17.3 The Depositary shall have no obligation to pay interest on any monies held by it unless the Depositary shall have been given an express written undertaking to do so; or, unless the Owners have requested in connection with a specified deposit of funds with the Depositary, that the Depositary undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depositary and the Owners, then, the Depositary, within 30 days after request from either Owner given to the Depositary and to the other Owner, shall purchase with such monies, to the extent feasible, negotiable United States Government securities maturing within one 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 commingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

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

17.5 The Depositary may resign by serving 60 days written notice on the Owners. Within 60 days after receipt of such notice, the Owner of the Commercial Property shall appoint a substitute who qualifies under Section 17.1 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 Owner of the Commercial Property shall fail to appoint a substitute within 60 days, then the Depositary may deposit such funds with either a court of competent jurisdiction or with a bank or trust company or a title insurer in Chicago, Illinois, which qualifies under Section 17.1 hereof.

ARTICLE XVIII

DISBURSEMENT OF FUNDS BY DEPOSITARY

18.1 (A) Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost or repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect, dated not more than 10 days prior to the date of the request for any such disbursement, setting forth the following:

(i) that the sum requested has either (a) been paid by or on behalf of the Owner of the Commercial Property and/or the Owner of the Residential Property (the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof, and shall state the progress of the work up to the date of said certificate and any other information required by the mechanics' lien law of the State of Illinois and any title insurer affording coverage against mechanics' liens;

(ii) 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 for the benefit of the Owners and the holders of the First Mortgages);

(iii) that no part of the cost of the services and materials described in the certificate has been previously paid or is the basis of any other previous or pending request for funds;

(iv) 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; and

(v) that all the work so far completed is proper and of the quality and class at least equal to the original work and as nearly as commercially practicable to the improvements existing immediately prior to the casualty or condemnation (unless prohibited by law or unless the Owners agree otherwise) and is in accordance with the approved plans and specifications, and is in compliance with the other requirements of this Declaration.

(B) Upon compliance with the provisions of Section 18.1(A), and

(i) upon receipt of contractors' and subcontractors' sworn statements required under the mechanics' lien law of the State of Illinois accompanied by partial or final waivers of lien, as appropriate; and

(ii) upon receipt of an official search by a title company or other evidence showing that there has not been filed with respect to the work on all or any portion of the Total Property any vendor's, mechanic's, laborer's, materialmen's or other similar lien, which has not been discharged of record, except such as will be discharged by payment of the amount then requested (in which event such payment shall be conditioned upon such discharge certificate being delivered simultaneously therewith),

the Depository shall, out of the monies so held by the Depositary, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any of the Owners or any of the holders of the First Mortgages or the Depositary 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 Depositary may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 18.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

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

ARTICLE XIX

ESTOPPEL CERTIFICATES

19.1 Each of the Owners shall, from time to time, within ten (10) days after receipt of written request from the other Owner (subject to payment therefor pursuant to Section 19.2 hereof), execute, acknowledge and deliver to the other Owner or to any existing or prospective purchaser or mortgagee designated by the other Owner, a certificate ("Estoppel Certificate") stating:

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

(B) whether there is any existing default hereunder by the other Owner and, if so, specifying the nature and extent thereof;

(C) whether there are any sums (other than those arising out of the normal course of operation of the Building within the previous forty-five (45) days) which the Owner executing such Estoppel Certificate is entitled to receive or demand from any of the Owners, and if there is any such sum, specifying the nature and amount thereof;

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

(E) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted, or otherwise known by the Owner against the enforcement of the other Owner's obligations hereunder;

(F) the total amount of all liens being asserted by the Owner executing the Estoppel Certificate under the provisions of this Declaration describing the applicable provision or provisions and the details of any such lien claim;

(G) whether the Owner executing the Estoppel Certificate has requested that a matter be submitted to arbitration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the Estoppel Certificate;

(H) whether there has been any request for or recommendation of reallocation of costs pursuant to Article VI hereof which has not been included in any modification referred to in clause (A) above, and if so, setting forth any such request or recommendation;

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

(J) the current addresses to which notices given to the Owner executing such Estoppel Certificate are required to be delivered under Article XXIII hereof; and

(K) such other matters as may be reasonably requested.

19.2 The Owner of the Commercial Property, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge a reasonable fee for preparing, executing and delivering the Estoppel Certificate and may, in its sole discretion, limit to items (B) and (F) described above the statements made in the certificate.

19.3 So long as the Residential Property remains subject to the provisions of the Act, (a) an Estoppel Certificate requested from the Owner of the Residential Property shall be issued by the Association on behalf of the Unit Owners and the Association, and any Estoppel Certificate so issued shall be binding on the Unit Owners and the Association, and (b) an Estoppel Certificate from the Owner of the Commercial Property may only be requested by the Association on behalf of a Unit Owner or Unit Owners and the Association.

ARTICLE XX

Exterior Parking Lot Agreement

The Property is affected by and subject to the Easement and Cost Allocation Agreement dated March 31, 2005 by and between The Pinnacle at Village Center LLC (Declarant's former legal name), Mutsuo Nakanishi as co-trustee of the Nakanishi Family Trust dated December 9, 1992 (representing the "Nakanishi Parcel") and Alpha Commercial Properties L.L.C., with the consent of Village Lofts L.L.C. recorded as Document No. 0523835333, and any and all amendments thereto.

ARTICLE XXI

MASTER ANTENNA SYSTEM

The Owner of the Commercial Building may install on the roof of the Building a satellite – master antenna television system consisting of a satellite receiving station, antenna and other related equipment (the "Master Antenna System"), individual satellite dishes for the tenants of the Commercial Property, and/or a cable communications system for the purpose of receiving signals and transmitting such signals throughout the Building pursuant to Section 4.1(K). The Owner of the Residential Property shall be responsible for the Maintenance of the Master Antenna System and/or the cable system. The respective Owner shall be responsible to maintain any installed individual satellite dishes or other communications antenna serving its Property

ARTICLE XXII

ALTERATIONS: ZONING

22.1 (A) Except as otherwise expressly required or permitted in Articles V, VI, X and XIV hereof, either Owner (hereinafter in this Article, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article, "Alterations") to the part of the Building within such Altering Owner's portion of the Building, provided that such Alterations comply with the provisions of this Section and of the other provisions of this Article. Prohibitions and restrictions on Alterations by the Owner of the Residential Property shall also apply to individual Unit Owners.

(B)(1) No alterations shall be made without the prior written consent of the other Owner if such Alterations will:

(i) unreasonably diminish the benefits afforded to the other Owner by any Easement or unreasonably interrupt the other Owner's use or enjoyment of any Easement,

(ii) degrade or diminish services to the Owner under Article VI hereof,

(iii) increase the costs or expenses for which the other Owner is or would be responsible pursuant to Article VI hereof,

(iv) alter the façade of the Building (other than signage, exterior lighting, awnings and related retail appurtenances installed by the Owner of the Commercial Property on the exterior of the Building for identification of the Building and occupants or tenants of the Commercial Building),

(2) No Alterations shall be made by the Owner of the Residential Property without the consent of the Owner of the Commercial Property if such Alterations will:

(aa) affect Commercial Easement Facilities other than minimally or incidentally, or

(bb) necessitate the erection of additional columns, bearing walls, or other structures upon or within the Commercial Property for the support of the Residential Building;

(cc) affect Residential Easement Facilities other than minimally or incidentally;

(dd) obscure or impair the visibility of the Commercial Building and each tenant storefronts, signs, awnings and appurtenances.

The prior written consent of the holder of the First Mortgage shall also be required with respect to any Alterations described in (i) through (ix) above.

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owner or the holder of the First Mortgage, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owner and the holder of the First Mortgage with respect to such other Owner's Building (if required) a copy of the plans and specifications showing the proposed Alterations and a reference to this Section. if such other Owner and the holder of the First Mortgage with respect to such other Owner's Building (if required) 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 Owner or holder of the First Mortgage whose consent is 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 Owner's consent to the proposed Alterations, and if, in the good faith opinion of the other Owner or of the holder of the first Mortgage with respect to such other Owner's Building, the Altering Owner has violated or will violate the provisions of Sections 22.1(A) or (B), then the other Owner or holder of the First Mortgage with respect to such other Owner's Building (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 22.1(A) or (B) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If the Objecting Party in good faith asserts violation of Sections 22.1(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, 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 22.1(A) or (B), then either Owner may submit such matter to the Architect for its determination as to whether the Alterations or proposed Alterations violate the provisions of Section 22.1(A) or (B) hereof, which determination shall be final and binding on the Owners and the holder of the First Mortgage.

(E) The Owners, in making Alterations, shall (i) perform all work in a first-class workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state, local and other governmental and quasi-governmental laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the Village of Mount Prospect 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 Building in such a manner as to minimize any noise, vibration, particulates and dust infiltration or other disturbance which would disturb an occupant or occupants of the other portions of the Building.

22.2 Neither Owner shall make any Alterations, allow any use of or undertake any other action relating to their respective portions of the Total Property which would violate the provisions of (i) the zoning ordinance applicable to the Total Parcel, as said ordinance may be amended from time to time, or (ii) any health codes, building codes, fire codes, or environmental and life safety regulations. In addition, neither Owner shall change the use of their respective portions of the Total Property without the consent of the other Owner.

22.3 Applications for building permits to make Alterations which comply with the provisions of this Article shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the Village of Mount Prospect or other government agency having jurisdiction thereof requires joinder of the other Owner. If joinder by the other Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument. If the Owner fails to execute said application or instruments when required hereunder to do so, the Altering Owner is hereby irrevocably appointed attorney-in-fact of the other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of the Altering Owner.

22.4 An Owner performing any work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor either (i) recognizes the separate ownership of the Residential Property and Commercial Property and agrees that any lien rights which the contractor or subcontractors have under the mechanics' lien laws of the State of Illinois 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 the mechanics' lien law of the State of Illinois in connection with giving notice of such "no lien" provision.

22.5 (A) The Commercial Parcel and Residential Parcel are now and shall continue to be combined and treated as one zoning lot for the purposes of complying with the zoning ordinance applicable to the Total Parcel. Neither Owner shall do or suffer anything to be done to cause the Total Parcel to become in violation of applicable zoning laws and ordinances.

22.6

(B) Applications for variations in the application of the provisions of the zoning ordinance applicable to the Total Parcel may be filed and processed solely by the Owner of the portion of the Total Property directly affected by such application and shall not require the joinder of the other Owner. In addition, the Owner of the Commercial Property shall have the right to file and process applications to amend the zoning ordinance applicable to the Total Parcel to increase the Gross Floor Area of the improvements which may be constructed on the Commercial Parcel without the joinder of the other Owner. The term "Gross Floor Area" shall have the same definition as that contained in the current Mount Prospect Zoning Ordinance.

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

ARTICLE XXIII

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

To the Owner of the Commercial Property:	Norwood Emerson LLC 250 S. Northwest Highway Suite 300 Park Ridge, Illinois 60068 Attn: Company Manager
with copies to:	Norwood Emerson LLC 250 S. Northwest Highway Suite 300 Park Ridge, Illinois 60068

Attn: General Counsel

and

Levenfeld Pearlstein, LLC
2 North LaSalle Street, 13th Floor
Chicago, Illinois 60602
Attention: Howard S. Dakoff Esq.

To the Owner of
the Residential Property:
Board)

Board of Directors of the
Lofts at Village Centre Condominium Association

Mount Prospect, Illinois 60056
Attention: Board President

23.1 So long as the Residential Property remains subject to the Act, (a) the Owner of the Commercial Property may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Association hereby being deemed sufficient, and (b) the Association alone shall be empowered to give notice on behalf of any or all Unit Owners under this Declaration, which notice shall be binding on the Unit Owners.

23.2 Any notice, demand, election or other communication delivered as aforesaid shall be deemed received when delivered and any notice, demand, election or other communication mailed as aforesaid shall be deemed received three (3) 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, demand, election or other communication in the same manner that service of a summons or legal process may be made.

ARTICLE XXIV

GENERAL

24.1 In fulfilling obligations and exercising rights under this Declaration, each Owner, and Unit Owner shall cooperate with each other to promote the efficient operation of each respective portion of the Total Property and the harmonious relationship amongst them and to protect the value of each of their 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 the other Owner may reasonably request in order to confirm to 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 the other Owner may reasonably request in order to enable such utility company to furnish

utility services as required by the requesting Owner, provided that the holders of the First Mortgages have first consented in writing to such easements.

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

24.3 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.

24.4 This Declaration may be amended or terminated only by an instrument signed by the then Owner of the Commercial Property and the then Owner of the Residential Property, the holder of record of each mortgage encumbering the Commercial Property or any part thereof and the holder of record of each mortgage made by the Declarant or the Owner of the Residential Property encumbering the Residential Property or any part thereof. So long as the Residential Property is submitted to the Act, the Association shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners and the Owner of the Residential Property, which amendments or termination shall be binding on all Unit Owners and the Owner of the Residential Property. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

24.5 Except for the perpetual Easements provided for under this Declaration, and except for the provisions of Section 22.5(A) hereof providing for one zoning lot, which provisions shall be perpetual, 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 24.4.

24.6 The provisions of this Declaration shall be construed to the end that the Building shall remain first-class residential and commercial property.

24.7 Terms used in this Declaration, unless elsewhere defined in this Declaration, shall have the meanings set forth in Article I.

24.8 Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement; provided, that if the benefited Owner is the Owner of the Commercial Property, then the consent of the holder of the First Commercial Mortgage shall also be required with respect to any such abandonment and if the benefited Owner is the Owner of the Residential Property, then the consent of the holder of the First Residential Mortgage shall also be required with respect to such abandonment.

24.9 Except as otherwise specifically set forth herein, all the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon the Owners and each subsequent holders of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successor, 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. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees or mortgagees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents.

24.10 The parties hereto acknowledge that this Declaration and all other instruments in connection herewith, have been negotiated, executed and delivered in the Village of Mount Prospect, 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 the State of Illinois, including without limitation, matters affecting title to all real property described herein.

24.11 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 holders of the First Mortgages) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

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

24.13 No provision of this Declaration shall be deemed to have been waived by any party hereto unless such waiver be in writing signed by the party making such waiver. The failure of any party subject hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Declaration, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

24.14 If and to the extent that any of the covenants, easements or other provisions of this Declaration 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, easements or other provisions may be valid, then the provision in question shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Joseph P. Kennedy, former Ambassador of the United States, living at the date of this Declaration.

24.15 If it becomes clear that additional easements among the portions of the Total Property are necessary or desirable to effectuate the purposes of this Declaration, provided said proposed additional easements will not materially interfere with the use and occupancy of any portion of the Building, materially affect access to, or operation of, any portion of the Building, or materially increase the operating costs of, or create any additional expense for, any of the Owners, Declarant hereby reserves the right to determine, create and grant such additional easements as are necessary. In the event any such new easements are created, this Declaration and the Exhibits hereto shall be amended by designating and describing said easements and such amended Declaration shall be signed by the Declarant to effectuate the grant or creation of such additional easements, and shall be recorded with the Recorder and shall have the same force, effect and priority as if such new easements were originally contained herein.

24.16 Without limiting the scope of Section 24.15 hereof, it is understood that the Building is substantially, but not wholly, completed, and that in the event the structural components of the Building or any Facilities, or any boundaries of the Commercial Property or of the Residential Property are not in place on the date of recording of this Declaration, then, Declarant reserves the right to, and shall cause to be recorded, from time to time until all of said structural components, Facilities and boundaries are in place, amendments of this Declaration identifying or describing any such structural components of Facilities, and/or amending the legal descriptions contained in this Declaration. Declarant may also from time to time amend this Declaration to: (i) conform the Building and such component and Facilities to "as built" condition, and (ii) correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto.

24.17 All consents and approvals of any of the Owners or any of the holders of the First Mortgages shall not be unreasonably withheld or delayed. Any disapproval of or failure to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefore.

24.18 Notwithstanding any ownership, directly or indirectly, in all or any portion of the Commercial Property or Residential Property in one person or entity, it is the intent and understanding that all such properties and estates shall remain separate and distinct from each other and shall not be merged into such other estates and properties by reason of such common ownership. A merger of any of such estates and properties can only be effected by a written instrument signed by the then owner of such estates and properties and by each mortgagee of such estates and properties and recorded in the office of the Recorder.

24.19 Each holder of the First Mortgages are given the right, but not the obligation, to act on behalf of the Owner whose interest is mortgaged to it, to cure defaults of such Owner within any applicable cure period set forth herein, and each Owner agrees to accept performance by such holders of the First Mortgages.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and its corporate seal affixed hereto as of the day and year first above written.

NORWOOD EMERSON LLC an Illinois limited liability company

[redacted] an Illinois

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Stephen S Messotta, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce T Adreani, as ——— President of Norwood Construction, Inc., an Illinois corporation, as Manager of NORWOOD EMERSON LLC., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing Declaration, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of the limited liability company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22nd day of May, 2007.

OFFICIAL SEAL
STEPHEN S. MESSUTTA
Notary Public - State of Illinois
My Commission Expires May 05, 2011

Notary Public

CONSENT OF MORTGAGEE

PARKWAY BANK & TRUST COMPANY holder of a mortgage on the Property, dated AUGUST 9, 2005, and recorded as Document Number 0529325976 in the Office of the Cook County Recorder of Deeds, hereby consents to the execution and recording of this Declaration of Covenants, Conditions, Restrictions and Easements, and agrees that said mortgage is subject thereto..

IN WITNESS WHEREOF, the said PARKWAY BANK & TRUST COMPANY has caused this instrument to be signed by its duly authorized offices on its behalf; all done at HARWOOD HEIGHTS Illinois, on this day of MAY 29, 2007.

PARKWAY BANK & TRUST CO.

By: [signature]
Its: Mortgage Loan Officer

[redacted]

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sandy Auriemma, a Notary Public in and for said County and State, do hereby certify that Lucia Scaffis and [blank], respectively of Parkway Bank + Trust Co, as such Mortgage Loan Officer, appeared before me this day in person and acknowledged 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 29th day of May, 2007

[redacted]