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BY, AND AFTER RECORDING
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105 WEST MADISON STREET
CHICAGO, ILLINOIS

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Box 400

CCRD REVIEWER

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105 WEST MADISON STREET
CHICAGO, ILLINOIS

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "**Declaration**") is made and entered into as of the 30th day of April, 2015 (the "**Effective Date**"), by 105 MADISON OPCO, LLC, a Delaware limited liability company ("**Declarant**").

RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, shall have the meanings set forth in ARTICLE 1 of this Declaration.

B. Declarant currently owns all of the Property, which consists of the Office Property and the Retail Property.

C. Since neither the Retail Property nor the Office Property is currently functionally independent of the other and each depends upon the other, to some extent, for structural support, enclosure, ingress and egress, Utility services and other facilities and components necessary to the efficient operation and intended use of the Retail Property and the Office Property, the Declarant hereof desires, subject to the terms and conditions contained herein, to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by providing for, declaring and creating (i) certain easements, covenants, conditions and restrictions against and affecting the Retail Property which will be binding upon each present and future Owner of the Retail Property or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Office Property and of any portion thereof or interest or estate therein, and (ii) certain easements, covenants, conditions and restrictions against and affecting the Office Property, which will be binding upon each present and future Owner of the Office Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Retail Property or of any portion thereof or interest or estate therein.

NOW, THEREFORE, in consideration of the Recitals and the covenants contained herein, as of the Effective Date of this Declaration, the Declarant hereof, intending to be legally bound, declares that the Property and any part thereof is and shall be owned, held, Mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall, unless terminated in accordance with the terms and conditions expressly provided herein, 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 Property, and each of the foregoing shall, unless terminated in accordance with the terms and conditions expressly provided herein, run with the land subjected to this Declaration.

ARTICLE 1
DEFINITIONS

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

2015 EQUIVALENT DOLLARS – As defined in Section 11.2.

ACT – The Condominium Property Act of the State of Illinois in effect as of the date hereof, as the same may be amended from time to time.

ALTERATIONS – As defined in Section 14.1(A).

ALTERING OWNER – As defined in Section 14.1(A).

APPLICABLE PERCENTAGE – As defined in Paragraph 5 of Exhibit 5.5.

APPROVING PARTY – The Owner designated from time to time to make certain decisions or give certain approvals pursuant to the terms of this Declaration. There shall be one Approving Party representing the Retail Property and one Approving Party representing the Office Property notwithstanding there may be more than one Owner of a Parcel. Each Approving Party shall have absolute discretion to make the decisions or amend or terminate this Declaration pursuant to Section 20.4 or give the approvals expressly designated to be made or given on behalf of that portion of the Property represented by such position regardless of whether the Approving Party then owns all or less than all of the Retail Property or the Office Property, as the case may be. The holder of the Approving Party position shall have the right to assign, in writing, such position to any other Person owning a portion of the Property represented by the Approving Party position. Declarant shall be the initial Approving Party for the Retail Property and for the Office Property. At any time there is a permitted change in the identity of any Approving Party, the Owner on whose behalf the new Approving Party is acting shall immediately notify the other Owner, in accordance with Section 19.2 hereof, of the name, address and comparable information as contained in Section 19.1 hereof relating to said new Approving Party, and no change in the identity of the Approving Party shall be effective until such notice is given.

ARBITRABLE DISPUTE – Any dispute arising under this Declaration which is expressly made subject to arbitration under the provisions of ARTICLE 11 hereof or designated as an Arbitrable Dispute.

ARCHITECT – As defined in Section 18.1.

ASSESSOR – As defined in Section 7.1.

AWARD – As defined in Section 13.1.

BANK OF AMERICA – Bank of America, N.A., and its successors and assigns.

BANK OF AMERICA LEASE – That certain lease agreement dated July 25, 2005, as heretofore or hereafter amended, between Declarant or the Owner of the First Floor East Retail Owner, as successor in interest to CR Madison, LLC, and Bank of America providing, for among other things, Bank of America's lease of the First Floor East Retail and a portion of the Second Floor East Retail. A copy of such lease has been provided to Office Owner.

BASEMENT – The level of the Building being the area down one level from the ground level of the Building, as so identified on the Easement Exhibit.

BASEMENT SPACE – That certain area in the Basement containing approximately five hundred (500) square feet as delineated in the Easement Exhibit.

BENEFITED OWNER – As defined in Paragraph 2 of Exhibit 5.5.

BUILDING – A collective reference to the Retail Improvements and the Office Improvements.

CITY – The City of Chicago, Illinois, a municipal corporation.

CLASS L – The special real estate tax classification adopted by Cook County, Illinois, to encourage the preservation and rehabilitation of landmark commercial, industrial, not-for-profit and multi-family residential buildings.

COMMON WALLS, FLOORS AND CEILINGS – All common structural and partition walls, floors and ceilings situated on or adjoining any of the Parcels, or located on one Parcel but forming the walls, floors or ceilings of the adjoining Parcel.

CONDOMINIUM ASSOCIATION – If and when a Parcel or any portion thereof is submitted to the Act, and legally becomes condominium property pursuant to the Act, then an Illinois not-for-profit corporation to be formed for the purpose of administering the respective portion(s) of the Parcel pursuant to the Act.

CONDOMINIUM DECLARATION – Any Declaration of Condominium Ownership and Easements, Restrictions, Covenants and By-Laws by which a Parcel or any portion thereof is submitted to the Act and legally becomes condominium property pursuant to the Act.

CONDOMINIUM OWNER – The Person or Persons (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of any portion of a Parcel submitted to the Act. If and so long as a Parcel or any portion thereof has been submitted to and remains subject to the provisions of the Act, the Condominium Owner shall mean collectively all of the Unit Owners in the portion of such Parcel as has been submitted to the Act, as represented by the Condominium Association for such portion.

CONDOMINIUM PROPERTY – A Parcel or any portion thereof that has been submitted to the Act, for so long as such Parcel or portion thereof remains subject to the Act.

CONSUMER PRICE INDEX – As defined in Section 11.2.

COST OF REPLACEMENT – The installed cost of a replacement of Facilities or other items or improvements being replaced incurred by an Owner and required to be capitalized in accordance with generally accepted accounting principles, consistently applied.

COST OF RESTORATION – The reasonable installed cost (including, without limitation, labor and materials) of the restoration of the Façade as contemplated in Section 5.11 as incurred by Retail Owner and required to be capitalized in accordance with generally accepted accounting principles, consistently applied. The installed cost of a capital item is the sum of net installed cost, general contractor's fee, design fee and interest during construction.

CREDITOR OWNER – An Owner (A) to whom 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 by this Declaration or (B) who has exercised any self-help remedy provided for in this Declaration. (An Owner may be a Creditor Owner notwithstanding that the term "**Creditor Owner**" is not specifically stated in a particular provision of this Declaration.)

DECLARANT – As defined in the Preamble of this Declaration.

DECLARATION – This Declaration, together with all Exhibits, amendments and supplements hereto.

DEFAULT AMOUNT – As defined in Section 10.1.

DEFAULTING OWNER – An Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to the other Owner. (An Owner may be a Defaulting Owner notwithstanding that the term "**Defaulting Owner**" is not specifically stated in a particular provision of this Declaration.)

DEPOSITARY – The person or entity, from time to time acting pursuant to ARTICLE 16.

EASEMENT EXHIBIT – The plans and drawings comprising Exhibit 1.1(C) depicting certain, but not all, of the Shared Facilities.

EASEMENT FACILITIES – A collective reference to Retail Easement Facilities and Office Easement Facilities.

EASEMENTS – All easements declared, granted or created pursuant to the terms and provisions of this Declaration.

EFFECTIVE DATE – The date specified in the Preamble on Page 1 of this Declaration.

EMERGENCY SITUATION – A situation (A) impairing or imminently likely to impair structural support of the Retail Improvements or the Office Improvements; (B) causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Retail Improvements or the Office Improvements or any property in, on, under, within, upon or about the Retail Improvements or the Office Improvements; (C) causing or imminently likely to cause substantial economic loss to an Owner; or (D) substantially disrupting or imminently likely to substantially disrupt business operations in the Retail Portion or the Office Portion for its intended purpose. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

ESTOPPEL CERTIFICATE – As defined in Section 15.1.

EXISTING ZONING – DC-16 Downtown Core District.

FAÇADE – The exterior wall of the Building from the street level up to the Roof, consisting of the terra cotta, concrete, granite, limestone, decorative bronze elements, bronze doors and windows, aluminum doors and windows, stainless steel, windows, window systems and other facing materials, colonnades and the cornice at the top of the Building covering or attached to the concrete or steel structural supports forming the curtain wall of the Building, but excluding (A) the Roof and the Roof structure, membrane, eaves, flashings and seals over the cornice; (B) doors (and door frames and all hardware) to fire escapes along the west side of the Building; (C) the structural supports for the exterior

wall of the Building; (D) emergency exit doors (and door frames and all hardware); and (E) any signage located on the Building.

FACILITIES – Any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers, closets (for facilities and risers) coils, compressors, computers, conduits, controls, control centers, condensers, cooling towers, couplers, devices, drainage, ducts, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, inverters, junctions, lines, conduits, ducts, light fixtures, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, sprinklers, starters, steam heating systems (including steam and condensate supply and return risers), switches, switchboards, systems, tanks, telecommunication equipment, transformers, valves, compressors, wiring, and the like used in providing services from time to time in any part of the Building, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevators, exhaust, heating, lighting protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, fire/life safety (including, without limitation, fire extinguishers) and any replacements of or additions to any of the items described in this paragraph.

FIRST FLOOR EAST RETAIL – The area so identified on the Easement Exhibit.

FIRST FLOOR WEST RETAIL – The area so identified on the Easement Exhibit.

HAZARDOUS MATERIALS – Any hazardous substance, pollutant, contaminant, or waste regulated under the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. §9601 et seq.); asbestos and asbestos–containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136 et seq.); PCBs and other substances regulated under the Toxic Substances Control Act, as amended (7 U.S.C. §136 et seq.); source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, as amended (29 C.F.R. §1910.1200 et seq.); industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.); and other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean–up.

IMPACTED OWNER – As defined in Section 6.2.

INDEMNIFYING OWNER – As defined in Section 6.1.

INDEMNITEE – As defined in Section 6.1.

INSPECTING OWNER – As defined in Section 6.6.

INSURANCE COSTS – As defined in Paragraph 6 of Exhibit 5.5.

LAND – The Retail Parcel and the Office Parcel, collectively.

LAW OR LAWS – All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers,

foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Property, or any parts thereof.

LEGAL PROCESS – As defined in Section 19.2.

LIENING OWNER – As defined in Section 6.2.

LOBBY – The ground floor lobby and open staircase and the second floor lobby located in and serving the Office Property as so identified on the Easement Exhibit.

MAINTENANCE – Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, washing, mopping, painting, installation, restoration, reconstruction and replacement when necessary or desirable to keep the Building or any Facilities in good condition, 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. As used in ARTICLE 5, Maintenance excludes obligations for which the other Owner is responsible under ARTICLE 4, ARTICLE 9 or ARTICLE 13. Maintenance costs include utilities, labor and materials consumed in providing Maintenance.

MECHANICS' LIEN ACT – As defined in Section 14.3.

MORTGAGE – As defined in Section 20.11(A).

MORTGAGEE – As defined in Section 20.11(A).

MULTIPLE OWNERS – As defined in Section 19.2.

NON-PERFORMING OWNER – As defined in ARTICLE 12.

NOTICE – As defined in Section 19.1.

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

OCCUPANT – Any Person from time to time entitled to the use and occupancy of any portion of the Retail Portion or the Office Portion as an Owner or under any lease, sublease, license, concession or other similar agreement.

OFFICE EASEMENT FACILITIES – Those Facilities now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Retail Portion (A) primarily benefiting the Office Portion, or (B) necessary for Office Owner to perform its obligations under ARTICLE 5 of this Declaration, but in either case excluding (i) those Facilities, the Maintenance for which Retail Owner is expressly responsible under ARTICLE 5, and (ii) Office Owned Facilities.

OFFICE IMPROVEMENTS – All improvements now or hereafter constructed within and upon the Office Portion by Declarant, its successors, grantees or assigns.

OFFICE OWNED FACILITIES – Those, if any, Facilities owned by Office Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Retail Portion.

OFFICE OWNER – The person or persons or entity or entities (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from

time to time, fee simple ownership of the Office Property, are hereinafter collectively referred to as the "**Office Owner**."

OFFICE PARCEL – The real property legally described on Exhibit 1.1(A), located in the City of Chicago, County of Cook and State of Illinois as the "**Office Parcel**" and any portion of the Retail Parcel that Office Owner may acquire in the future.

OFFICE PORTION – That portion of the Building located within the Office Parcel.

OFFICE PROPERTY – The Office Parcel improved with the Office Improvements.

OPERATING EXPENSES – As defined in Paragraph 6 of Exhibit 5.5.

OPERATING OWNER – As defined in Paragraph 2 of Exhibit 5.5.

OWNED FACILITIES – A collective reference to Retail Owned Facilities and the Office Owned Facilities.

OWNER(S) – Retail Owner and/or Office Owner.

PARCEL(S) – The Retail Parcel and/or the Office Parcel.

PERMITTEES – All Occupants and the officers, directors, members, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Building.

PERSON – Any individual, partnership, firm, association, corporation, limited liability company, trust, land trust or any other form of business or not–for–profit organization or governmental entity.

PRIOR LIEN – As defined in Section 10.1.

PROGRESS PAYMENT – As defined in Paragraph 2 of Exhibit 5.5.

PROJECTION NOTICE – As defined in Paragraph 2(a) Exhibit 5.5.

PROJECTIONS – As defined in Paragraph 2(a) of Exhibit 5.5.

PROPERTY – A collective reference to the Retail Property and the Office Property.

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

RETAIL EASEMENT FACILITIES – Those Facilities now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Office Portion (A) primarily benefiting the Retail Portion, or (B) necessary for Retail Owner to perform its obligations under ARTICLE 5 of this Declaration, but in either case excluding (i) those Facilities, the Maintenance for which Office Owner is expressly responsible under ARTICLE 5, and (ii) Retail Owned Facilities.

RETAIL IMPROVEMENTS – All improvements now or hereafter constructed upon and within the Retail Portion by Declarant, its successors, grantees or assigns.

RETAIL OWNED FACILITIES – Those, if any, Facilities owned by Retail Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the Office Portion.

RETAIL OWNER – The person or persons or entity or entities (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Retail Property, are hereinafter collectively referred to as the "**Retail Owner**."

RETAIL PARCEL – The real property legally described on Exhibit 1.1(A) located in the City of Chicago, County of Cook and State of Illinois as the "**Retail Parcel**"; provided, however, in the event Office Owner acquires any portion of the Retail Portion, then, such portion shall thereafter not be part of the Retail Parcel.

RETAIL PORTION – The portion of the Building consisting of the First Floor East Retail, the First Floor West Retail and the Second Floor East Retail located within the Retail Parcel; provided, however, in the event Office Owner acquires any portion of the Retail Portion, such portion shall thereafter not be part of the Retail Portion.

RETAIL PROPERTY – The Retail Parcel, improved with the Retail Improvements.

RETAIL SIGNAGE – The exterior signage for the Retail Parcel, as currently exists or as may be installed in the future and any modifications, additions or requirements thereto, all of which shall be in accordance with all Laws and shall not affect any landmark status for the Building.

REVIEW – As defined in Section 6.6.

ROOF – The roof level of the Building, including, without limitation, the membrane, roof covering and roof structure, gutters, downspouts and flashings, and the exterior walls of the mechanical room above the twenty-fourth (24^{th}) floor of the Building.

SECOND FLOOR EAST RETAIL – The area so identified on the Easement Exhibit.

SERVICE AREAS – The area so identified on the Easement Exhibit.

SHARED STAIRWELL – As defined in Section 3.2(N).

SHARED SYSTEMS – As defined in the Exhibits referenced in Section 5.1.

SPECIAL AMENDMENT – As defined in Section 20.15.

STATEMENT – As defined in Paragraph 2(c) of Exhibit 5.5.

STRUCTURAL SUPPORTS – All construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Building.

SUB-BASEMENT – The level of the Building being the area below the Basement, as so identified on the Easement Exhibit.

SURVEY – Order No. 2014-20217-001 dated April 28, 2015 prepared by Chicago Guarantee Survey Company, a copy of which is attached hereto as Exhibit 1.1(D).

UNAVOIDABLE DELAY – As defined in ARTICLE 12.

UNIT – Any part of the Office Parcel or the Retail Parcel described as a "**Unit**" in any Condominium Declaration.

UNIT OWNER – The person or persons, entity or entities whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.

UNIT OWNERSHIP – Any part of a Parcel which has been submitted to the Act consisting of one (1) Unit and the undivided interest in the common elements attributable thereto.

UTILITY or UTILITIES – Water, electricity, sewer, gas, steam, telephone or network television, cable television, satellite equipment and microwave signals, internet service, or other services or materials generally known as utilities, now or in the future.

UTILITY COMPANY – Any Person, including governmental bodies, furnishing any Utilities.

WORK – As defined in Section 17.1(A).

1.2 **Construing Various Words and Phrases.** Wherever it is provided in this Declaration that a party "may" perform an act or do anything, it shall be construed that party "may, but shall not be obligated to," so perform or so do. The following words and phrases shall be construed as follows: (A) "at any time" shall be construed as "at any time or from time to time;" (B) "any" shall be construed as "any and all;" (C) "including" shall be construed as "including but not limited to;" and (D) "will" and "shall" shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration, and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Declaration. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to this Declaration as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Declaration for convenience only and shall not be used to construe the meaning of any part of this Declaration.

ARTICLE 2
EASEMENTS APPURTENANT TO OFFICE PARCEL

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

(A) Retail Owner has granted, reserved, declared and created the Easements described in Section 2.2 of this ARTICLE 2. The term "Granted" or "granted" as hereinafter used in this ARTICLE 2 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 2.2 of this ARTICLE 2 shall bind and be enforceable against Retail Owner and its successors, grantees and assigns.

(B) The Easements granted by Section 2.2 of this ARTICLE 2 benefit Office Owner and its successors, grantees, assigns and Permittees.

(C) For the purpose of Section 2.2 of this ARTICLE 2, the Retail Portion shall be deemed to be the servient tenement. Where only a portion of the Retail Portion is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement. Any

conveyance of all or any portion of Retail Owner's estate or interest in the Retail Portion shall be made subject to the easements and obligations in this Declaration.

(D) The Easements granted by Section 2.2 of this ARTICLE 2 are appurtenant to and shall benefit the Office Portion, which shall, for the purpose of this ARTICLE 2 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Office Portion is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Office Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement.

(E) In exercising an Easement granted under this ARTICLE 2, the Office Owner shall minimize the impact of its exercise on Retail Owner, taking into consideration the impact of any disruption, and shall comply with the provisions of Section 14.1(D) whether or not the work being performed or exercise of the Easement constitutes Alterations. In addition to complying with the foregoing restrictions with regard to the easement rights granted under this ARTICLE 2, to the extent that access to any secured or unsecured rooms, vaults or other private or semi-private areas within the Retail Parcel (the "**Retail Restricted Access Areas**") is required in connection with the exercise of such easement rights, Office Owner shall provide reasonable advance notice to the Approving Party acting on behalf of Retail Owner (the "**Office Owner Notice of Access**") as to the nature and extent of the required access to such Retail Restricted Access Areas, and Office Owner shall not access any of the Retail Restricted Access Areas without: (i) first obtaining Retail Owner's prior consent, which consent shall not be unreasonably withheld, (ii) being accompanied by an authorized representative of Retail Owner, and (iii) otherwise complying with the terms of any tenant leases affected by the exercise of any access rights to any of the Retail Restricted Access Areas. Notwithstanding the foregoing, in the event the Approving Party acting on behalf of Retail Owner fails to respond to the Office Owner Notice of Access within three (3) business days, Retail Owner shall be deemed to have consented to such access by Office Owner, and Office Owner shall permit (but not be obligated to delay such access for) an authorized representative of Retail Owner to accompany Office Owner; provided, however, such notice shall also be sufficient to satisfy the landlord's notice obligations to the tenant for such entry into any tenant space under the lease for any such space. For purposes of this Section 2.2(E), the Office Owner Notice of Access shall include bold, conspicuous language at the top of such notice and in the body of such notice stating, "FAILURE TO RESPOND TO THIS NOTICE WITHIN THREE (3) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL BE DEEMED YOUR APPROVAL OF THE MATTERS RAISED IN THIS NOTICE". In the event of an Emergency Situation, Office Owner shall provide such prior notice to Retail Owner as may be practicable considering the circumstances.

(F) Retail Owner may: (i) in connection with the Maintenance of the Retail Portion; (ii) in an Emergency Situation; or (iii) in order to prevent a dedication of, or an accruing of rights by the public in and to the use of the Retail Property, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. To the extent practicable, Retail Owner shall provide alternative access during any temporary interruption or restriction of access pursuant to this subsection. Retail Owner may, from time to time, impose (a) reasonable limitations on Office Owner's or any of Office Owner's Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Retail Portion described in Section 2.2 of this ARTICLE 2, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which Office Owner or any of Office Owner's Permittees may use such Easement, and (b) reasonable security controls

consistent with the use of the Retail Portion. In imposing limitations or controls, Retail Owner shall take into consideration the reasonable needs and requirements of the users of the Easement as well as the Retail Owner's own needs and requirements.

(G) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this ARTICLE 2 shall constitute Arbitrable Disputes. Notwithstanding anything to the contrary contained herein, Office Owner and Retail Owner acknowledge that, as of the date of this Declaration, it is not possible to describe each Easement that is necessary for the Office Owner to get the benefit of the use and enjoyment of the Office Parcel, and the Owners agree to work in good faith to add or delete Easements as appropriate.

(H) Any exclusive Easement, if any, granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 5.6, and its rights under ARTICLE 9 or ARTICLE 13 or elsewhere in this Declaration, and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

2.2 **Grant of Easements.** The following Easements in, to, under, over, upon and through portions of the Retail Portion, in favor of the Office Portion, are hereby granted.

(A) **Ingress and Egress in Favor of Office Owner.** A non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the Retail Portion as are reasonably necessary for ingress and egress to the Office Portion and to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (i) the Office Portion, (ii) any Facilities located in the Retail Portion which provide or are necessary to provide the Office Portion with any utilities or other services necessary to the operation of the Office Portion, including, without limitation, Office Easement Facilities and Office Owned Facilities and (iii) any other areas in the Retail Portion as to which an Easement for use or Maintenance has been granted to Office Owner, or the obligation to perform a service has been imposed by Section 5.1, including, without limitation, vertical plumbing, mechanical, ventilation, electrical and communication shafts, and electrical, mechanical, telecommunications, and any other equipment areas that serve the Office Portion.

(B) **Office Property Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the Retail Portion for the support of (i) the Office Portion, (ii) any Facilities or areas located in the Retail Portion with respect to which Office Owner is granted an Easement and (iii) Office Owned Facilities.

(C) **Use of Facilities Benefiting the Office Property.** A non-exclusive easement (i) for the intended use of all Facilities (other than Office Easement Facilities for which an easement for use is granted in (D), below) which are (a) located in the Retail Portion, including Office Owned Facilities; and (b) connected to Facilities located in the Office Portion which provide or are necessary to provide the Office Portion with any utilities or other services necessary to the operation of the Office Portion and (ii) permitting the exercise of the rights of self-help granted to Office Owner pursuant to Section 5.6 of this Declaration.

(D) **Office Easement Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Office Easement Facilities or future Facilities in the Retail Portion in locations existing as of the Effective Date or in locations resulting from the

construction of any new Improvements or other locations in the Retail Portion mutually acceptable to Retail Owner and Office Owner.

(E) **Office Common Walls, Floors and Ceilings.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Retail Parcel and the Office Parcel which also serve as Common Walls, Floors and Ceilings for the Office Portion.

(F) **Office Utilities.** To Office Owner (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for Utility purposes required by the Office Portion, in those areas of the Retail Portion where such utilities are currently located. Office Owner shall attempt to install new Utility Facilities in the Office Portion if, at any time, it shall become necessary to relocate or add to existing Utility Facilities or install new Facilities. If installation of new Facilities within the Office Portion is not feasible or is cost prohibitive, Office Owner may request additional or relocated Utility easements in the Retail Portion from Retail Owner. Without limiting the provisions of ARTICLE 14 which may apply, Retail Owner shall have approval rights as to the location of the Utility Facilities, the method of installation, the identity of contractor(s), and the time of installation. Retail Owner's approval shall not be unreasonably withheld including, without limitation, in the event sewer lines, communication or electrical conduit must be installed in the Retail Portion below a floor slab that is located beneath the Office Portion. No such additional or relocated Utility easements may (i) unreasonably interfere with the reasonable use and enjoyment of the Retail Portion for the purposes for which the Retail Portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, or (ii) require Retail Owner to grant an easement which would convert otherwise available space for occupancy or storage unless such relocation or additional easements are required by Law and no other space is reasonably available, and Retail Owner is equitably compensated for the value of such converted space. Office Owner shall repair and restore the Retail Portion to the condition existing prior to installation of any new Facilities and shall pay Retail Owner's reasonable costs and expenses in connection with granting such easement including, without limitation, all amounts Retail Owner must pay to tenants of the Retail Portion as a result of Office Owner's performing work in the Retail Portion hereunder. Retail Owner hereby also grants to Office Owner an easement permitting the existence, attachment and Maintenance of Office Owned Facilities in the Retail Portion and an exclusive easement for Maintenance and use of the Office Easement Facilities.

(G) **Office Portion Encroachments.** A non-exclusive easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in the same location or result from the construction of any Retail Improvements or any renovation of the Retail Portion or if, by reason of settlement or shifting of the Building, any part of the Office Portion or Office Owned Facilities not currently located within the Retail Parcel encroaches or shall hereafter encroach upon any part of the Retail Parcel. This Easement shall exist only so long as the encroaching portion of the Office Portion or such Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is materially enlarged.

(H) **Office Owned Facilities.** A non-exclusive easement permitting the existence, attachment, use and Maintenance of Office Owned Facilities or future Facilities in the Retail Portion, in locations now existing as of the Effective Date or in locations resulting from the construction of any new Improvements or other locations in the Retail Portion mutually acceptable to Retail Owner and Office Owner.

(I) **Easement Exhibit.** For convenience, certain, but not all, of the easements granted herein are shown and identified on the Easement Exhibit. The absence of a depiction of any such areas and Facilities on the Easement Exhibit does not mean that an easement with respect to such areas and Facilities does not exist. The Easement Exhibit is only intended to help locate or identify certain easements granted herein.

ARTICLE 3
EASEMENTS APPURTENANT TO RETAIL PARCEL

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

(A) Office Owner has granted, reserved, declared and created the Easements described in Section 3.2 of this ARTICLE 3. The term "Granted" or "granted" as hereinafter used in this ARTICLE 3 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 3.2 of this ARTICLE 3 shall bind and be enforceable against Office Owner and its successors, grantees and assigns. Certain of the Easements granted herein may be located, all or in part, within areas licensed from the City and not owned by Office Owner. Office Owner's ability to grant Easements in such instances is limited to the extent of Office Owner's ownership interest or interest for the right of use.

(B) The Easements granted by Section 3.2 of this ARTICLE 3 benefit Retail Owner, and its successors, grantees, assigns and Permittees.

(C) For purposes of Section 3.2 of this ARTICLE 3, the Office Portion shall be deemed to be the servient tenement. Where only a portion of the Office Portion is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement. Any conveyance of all or any portion of Office Owner's estate or interest in the Office Portion shall be made subject to the easements and obligations in this Declaration.

(D) The Easements granted by Section 3.2 of this ARTICLE 3 are appurtenant to and shall benefit the Retail Portion, which shall, for the purpose of this ARTICLE 3 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Retail Portion is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Retail Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement.

(E) In exercising an Easement granted under this ARTICLE 3, Retail Owner shall minimize the impact of its exercise on Office Owner, taking into consideration the impact of any disruption, and shall comply with the provisions of Section 14.1(D) whether or not the work being performed or exercise of the Easement constitutes Alterations. In addition to complying with the foregoing restrictions with regard to the easement rights granted under this ARTICLE 3, to the extent that access to the Office Restricted Access Areas is required in connection with the exercise of such easement rights, Retail Owner shall provide reasonable advance notice to the Approving Party acting on behalf of Office Owner (the "**Retail Owner Notice of Access**") as to the nature and extent of the required access to such Office Restricted Access Areas, and Retail Owner shall not access any of the Office Restricted Access Areas without: (i) first obtaining Office Owner's prior consent, which consent shall not be unreasonably withheld; (ii) being accompanied by an authorized representative of Office Owner; and (iii) otherwise complying with the terms of any tenant leases affected by the exercise of any access rights to any of the Office Restricted Access Area. Notwithstanding the foregoing, in the event the Approving Party acting on behalf of Office Owner fails to respond to the Retail Owner Notice of Access within

three (3) business days, Office Owner shall be deemed to have consented to such access by Retail Owner, and Retail Owner shall permit (but not be obligated to delay such access for) an authorized representative of Office Owner to accompany Retail Owner; provided, however, such notice shall also be sufficient to satisfy the landlord's notice obligations to the tenant for such entry into any tenant space under the lease for any such space. For purposes of this Section 3.1(E), the Retail Owner Notice of Access shall include bold, conspicuous language at the top of such notice and in the body of such notice stating, "FAILURE TO RESPOND TO THIS NOTICE WITHIN THREE (3) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE SHALL BE DEEMED YOUR APPROVAL OF THE MATTERS RAISED IN THIS NOTICE". In the event of an Emergency Situation, Retail Owner shall provide such prior notice to Office Owner as may be practicable considering the circumstances.

(F) Office Owner may: (i) in connection with the Maintenance of the Office Portion; or (ii) in an Emergency Situation; or (iii) in order to prevent a dedication of, or an accruing of rights by the public in and to the use of the Office Property, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. To the extent practicable, Office Owner shall provide alternative access during any temporary interruption or restriction of access pursuant to this subsection. Office Owner may, from time to time, impose (a) reasonable limitations on Retail Owner's or any of Retail Owner's Permittees' use of an Easement providing for ingress and egress in, over, on, across and through the Office Portion described in Section 3.2 of this ARTICLE 3, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which Retail Owner or any of Retail Owner's Permittees may use such Easement, and (b) reasonable security controls consistent with the use of the Office Portion. In imposing limitations or controls, Office Owner shall take into consideration the reasonable needs and requirements of the users of the Easement as well as the imposing Owner's own needs and requirements.

(G) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under this ARTICLE 3 shall constitute Arbitrable Disputes. Notwithstanding anything to the contrary contained herein, Office Owner and Retail Owner acknowledge that, as of the date of this Declaration, it is not possible to describe each Easement that is necessary for Retail Owner to get the benefit of the use and enjoyment of the Retail Parcel, and the Owners agree to work in good faith to add or delete Easements as appropriate.

(H) Any exclusive Easement, if any, granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 5.6, and its rights under ARTICLE 9 or ARTICLE 13 or elsewhere in this Declaration, and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

3.2 **Grant of Easements**. The following Easements in, to, under, over, upon and through portions of the Office Portion, in favor of the Retail Portion, are hereby granted.

(A) **Ingress and Egress in favor of Retail Owner**. A non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through the Office Portion as are reasonably necessary for ingress and egress to the Retail Portion and to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (i) the Retail Portion, (ii) any Facilities located in

the Office Portion which provide or are necessary to provide the Retail Portion with any utilities or other services necessary to the operation of the Retail Portion, including, without limitation, Retail Easement Facilities and Retail Owned Facilities, (iii) the ComEd vault (to the extent Maintenance is not provided by ComEd), and (iv) any other areas in the Office Portion as to which an Easement for use or Maintenance has been granted to Retail Owner, or the obligation to perform a service has been imposed by Section 5.1, including, without limitation, vertical plumbing, mechanical, ventilation, electrical, and communication shafts; stairwells; electrical, mechanical, telecommunications, and any other equipment areas that serve the Retail Portion. Retail Owner shall have the right to create new points of ingress and egress from the Retail Portion to the Office Portion, provided Retail Owner shall submit to Office Owner at least thirty (30) days' notice to Office Owner of its intent to exercise this right, Retail Owner's proposed plans and specifications for such work such plans and specifications shall be subject to the review and comment by (but not the approval of) Office Owner. The work to be performed by Retail Owner in accordance with the immediately preceding sentence shall be deemed to constitute Alterations pursuant to Article 14.

(B) **Retail Property Structural Support**. A non-exclusive easement in all Structural Supports located in or constituting a part of the Office Portion for support of (i) the Retail Portion, (ii) any Facilities or areas located in the Office Portion with respect to which Retail Owner is granted an Easement and (iii) Retail Owned Facilities.

(C) **Use of Facilities Benefiting Retail Property**. A non-exclusive easement (i) for the intended use of all Facilities (other than Retail Easement Facilities for which an easement for use is granted in (E) below) which are (a) located in the Office Portion, including Retail Owned Facilities; and (b) connected to Facilities located in the Retail Portion which provide or are necessary to provide the Retail Portion with any utilities or other services necessary to the operation of the Retail Portion and (ii) permitting the exercise of the rights of self-help granted to Retail Owner pursuant to Section 5.6 of this Declaration.

(D) **Retail Easement Facilities**. A non-exclusive easement permitting the existence, attachment, use and Maintenance of Retail Easement Facilities or future Facilities in the Office Portion, including, without limitation, in the Basement and Sub-Basement, in locations existing as of the Effective Date or in locations resulting from the construction of any new Improvements or other locations in the Office Portion mutually acceptable to Retail Owner and Office Owner. This Easement shall also include Retail Owner's right to add additional Facilities, including, without limitation, condensers and air intakes and exhaust vents from the Basement or Sub-Basement to and through the west Façade and at or near the Retail Easement Facilities located on the west Façade, including, without limitation, connecting to existing exhaust systems of the Building.

(E) **Retail Common Walls, Floors and Ceilings**. A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Office Parcel and the Retail Parcel which also serve Common Walls, Floors and Ceilings for the Retail Portion.

(F) **Retail Utilities**. To Retail Owner (and if requested by the applicable Utility Company, to such Utility Company) non-exclusive easements for Utility purposes required by the Retail Portion, in those areas of the Office Portion where such utilities are currently located. Retail Owner shall attempt to install new Utility Facilities in the Retail Portion if, at any time, it shall become necessary to relocate or add to existing Utility Facilities or install new Facilities. If installation of new Facilities within the Retail Portion is not feasible or is cost prohibitive, Retail

Owner may request additional or relocated Utility easements in the Office Portion from Office Owner. Without limiting the provisions of ARTICLE 14 which may apply, Office Owner shall have approval rights as to the location of the Utility Facilities, the method of installation, the identity of contractor(s), and the time of installation. Office Owner's approval shall not be unreasonably withheld. No such additional or relocated Utility easements may (i) unreasonably interfere with the reasonable use and enjoyment of the Office Portion for the purposes for which the Office Portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, or (ii) require Office Owner to grant an easement which would convert otherwise available space for occupancy or storage unless such relocation or additional easements are required by Law and no other space is reasonably available, and Office Owner is equitably compensated for the value of such converted space. Retail Owner shall repair and restore the Office Portion to the condition existing prior to installation of any new Facilities and shall pay Office Owner's reasonable costs and expenses in connection with granting such easement including, without limitation, all amounts Office Owner must pay to tenants of the Office Portion as a result of Retail Owner's performing work in the Office Portion hereunder. Office Owner hereby also grants to Retail Owner an easement permitting the existence, attachment and Maintenance of Retail Owned Facilities in the Office Portion and an exclusive easement for Maintenance and use of the Retail Easement Facilities.

(G) **Retail Property Structural Support**. A non-exclusive easement in all Structural Supports located in or constituting a part of the Office Portion for support of (i) the Retail Portion, (ii) any Facilities or areas located in the Office Portion with respect to which Retail Owner is granted an Easement and (iii) Retail Owned Facilities.

(H) **Use of Facilities Benefiting Retail Property**. A non-exclusive easement (i) for the intended use of all Facilities (other than Retail Easement Facilities for which an easement for use is granted in (I) below) which are (a) located in the Office Portion, including Retail Owned Facilities; and (b) connected to Facilities located in the Retail Portion which provide or are necessary to provide the Retail Portion with any utilities or other services necessary to the operation of the Retail Portion and (ii) permitting the exercise of the rights of self-help granted to Retail Owner pursuant to Section 5.6 of this Declaration.

(I) **Retail Common Walls, Floors and Ceilings**. A non-exclusive easement for support, enclosure, use and Maintenance with respect to Common Walls, Floors and Ceilings existing or constructed in and along the common boundaries of the Office Parcel and the Retail Parcel which also serve Common Walls, Floors and Ceilings for the Retail Portion.

(J) **Retail Portion Encroachments**. A non-exclusive easement permitting the existence of encroachments if such encroachments presently exist as of the Effective Date or are replaced in the same location or result from any construction of the Office Improvements or any renovation of the Office Portion or if, by reason of settlement or shifting of the Building, any part of the Retail Portion or Retail Owned Facilities not currently located within the Office Parcel encroaches or shall hereafter encroach upon any part of the Office Parcel. This Easement shall exist only so long as the encroaching portion of the Retail Portion or such Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is materially enlarged.

(K) **Retail Owned Facilities**. A non-exclusive easement permitting the existence, attachment, use and Maintenance of Retail Owned Facilities or future Facilities in the Office Portion, including, without limitation, in the Basement and Sub-Basement, in locations existing

as of the Effective Date or in locations resulting from the construction of any new Improvements or other locations in the Office Portion mutually acceptable to Retail Owner and Office Owner. This Easement shall also include Retail Owner's right to install new furnaces and boilers in the Sub-Basement.

(L) **Retail Communication Facilities**. To Retail Owner (and any Utility Company, if required), a non-exclusive easement for the installation, use and Maintenance of antennas, microwave dishes and/or any other type of communications equipment on a portion of the Roof (which portion shall be mutually acceptable to Office Owner and Retail Owner) and in and through shafts, risers and conduit within the common areas of the Office Portion and utilities serving the same and for the use and Maintenance of future communication Facilities connecting communication Facilities or areas in the Retail Portion (including, without limitation, as contemplated in Section 3.3 of the Bank of America Lease) (so long as the Bank of America Lease is in effect)) to any such antennas or other communications devices or equipment on the Roof which are currently available or become available through technological advances. Retail Owner shall not be entitled to install any Facilities in the risers or on the roof without Office Owner's prior written approval, not to be unreasonably withheld. Office Owner's approval rights shall extend not only to the Facilities to be installed, but also to their location and method of installation. Office Owner may require that Office Owner's roofing contractor be used for any rooftop installation in order to preserve the roof warranty. Office Owner may allocate riser space based on availability and anticipated future space requirements. Office Owner may condition its approval of any communication Facility installation hereunder on Retail Owner's agreement to remove that Facility at a certain time. Office Owner may also require Retail Owner to agree to remove and reinstall any rooftop installation during roof maintenance and replacement. Furthermore, any such equipment shall only be used for the benefit of one or more Occupants of the Retail Portion. Neither Retail Owner nor any Occupant of the Retail Portion shall have any right to assign said easement right to any third party, nor shall Retail Owner or any Occupant of the Retail Portion be permitted to enter into any form of lease, license or other use agreement (other than with any Occupant of the Retail Portion for use within the Retail Portion) with any third party relating to any such antenna, microwave dish or other communications equipment. The easement granted under this Section 3.2(L) may be terminated by Office Owner, in the event that the Office Portion is being demolished, at any time by delivering written notice of such termination to Retail Owner, provided that such notice is given at least ninety (90) days prior to the effective date of such termination.

(M) **Retail Portion Mechanical Room.** A non-exclusive easement for the use and Maintenance of any existing or future generator, mechanical, machine, electrical, stair, switchgear, panel meter, equipment or pump rooms which are now located in the Office Portion and serve the Retail Portion or as may hereafter be located in the Office Portion in accordance with the provisions of this Declaration or other agreement of the Owners. This easement shall include, but not be limited to, any fire/life safety panel and equipment.

(N) **Shared Stairwell**. A non-exclusive easement for ingress and egress for access to the Second Floor East Retail in, over, on, across and through the Lobby and open stairwell in the Lobby, for access to the Second Floor Retail and the Basement in, over, on, across and through the Service Areas and the stairwell in the Service Areas and for access to the Second Floor East Retail, the Basement and the Sub-Basement in, over, on across and through the Lobby and the stairwell and stairwell area and stairwell door located on the ground floor extending to the Roof, each as identified on the Easement Exhibit as "Stairwell" (collectively, the "**Shared Stairwell**"). Office Owner shall have the right to impose reasonable rules and regulations with respect to such access of the Shared Stairwell, and shall have the right to install such locks, key fob and key card

scanners and such other devices at the doorways and access points to the Office Parcel in order to facilitate secure and authorized access to and from such stairwells, or to comply with applicable Laws.

(O) **Service Areas**. To and for the benefit of the Retail Parcel and Retail Owner, and its Permittees, the right to use, in common with Office Owner and its Permittees the service areas described on the Easement Exhibit as the "Service Areas", including right to use the freight and lift elevators, stairs and the dumpster in the Service Areas. Office Owner shall perform all Maintenance, including regular pest control, required to keep the Service Areas and the trash dumpsters located therein in a clean, sightly, sanitary and safe condition.

(P) **Lobby**. To and for the benefit of the Retail Parcel and Retail Owner, and its Permittees, the right to use, in common with Office Owner and its Permittees the Lobby described on the Easement Exhibit as the "Lobby" and the stairs and the elevators in the Lobby. Office Owner shall perform all Maintenance, including regular pest control, required to keep the Lobby in a clean, sightly, sanitary and safe condition and to keep the stairs and the elevators in a working, clean, slightly, sanitary and safe condition.

(Q) **Retail Signage**. To and for the benefit of the Retail Parcel, the right to install, maintain, operate, modify and replace the Retail Signage together with access thereto for such purposes, as and where located on Office Property.

(R) **Facade**. To and for the benefit of the Retail Parcel and Retail Owner, and its Permittees, the right to use the Façade for the purposes contemplated in Section 5.11(B).

(S) **Boilers.** To and for the benefit of the Retail Parcel and Retail Owner, a non-exclusive easement for the use of the boilers located on the Office Property, including installation of such pipes, conduits and other equipment as shall be necessary to connect the Retail Parcel to such boilers.

(T) **Sprinkler and Fire Suppression Systems.** To and for the benefit of the Retail Parcel and Retail Owner, an easement permitting the connection of the Retail Parcel to the sprinkler and fire suspension systems located in or on the Office Property, including the installation of all such equipment as shall be necessary to effectuate such connection.

(U) **Maintenance.** To and for the benefit of the Retail Parcel and Retail Owner and its Permittees, a non-exclusive easement for access to the Office Property as and to the extent necessary, in the reasonable judgment of Retail Owner, for the Maintenance of the Retail Property and Retail-Owned Facilities. This easement includes, but is not limited to, access to the Sub-Basement Area, Basement Area and the Office Roof.

(V) **Generators.** To and for the benefit of the Retail Parcel and Retail Owner and its Permittees, a non-exclusive easement for the use of the existing emergency generator in the Basement Area.

(W) **Basement Space**. To and for the benefit of the Retail Parcel and Retail Owner and its Permittees, an exclusive easement for the use and enjoyment of the Basement Space in accordance with all Laws; provided, however, (i) such use shall be limited to Retail Owner's personal use or ancillary support of businesses located in the Retail Parcel and (ii) in no event, shall Retail Owner use, or permit to be used, the Basement Space for retail sales to the public or allow customer traffic.

(X) **Easement Exhibit.** For convenience, certain, but not all, of the areas and Facilities that are subject to easements granted herein are shown and numbered on the Easement Exhibit attached hereto. The absence of a depiction of any such areas and Facilities on the Easement Exhibit does not mean that an easement with respect to such areas and Facilities does not exist. The Easement Exhibit is only intended to help locate or identify certain easements granted herein.

ARTICLE 4
STRUCTURAL SUPPORT

4.1 **Structural Safety and Integrity.** No Owner shall do or permit any act which would adversely affect the structural safety or integrity of any portion of the Building owned by any other Owner.

4.2 **Construction of Support**.

(A) The Owner responsible for any adverse effect on the structural safety or integrity of any portion of the Building owned by any other Owner shall commence the construction of all necessary remedial structural support within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by the Architect and the other Owner (whose approval will not be unreasonably withheld or delayed). The responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs. The provisions of Sections 9.3 and 9.4, and not this ARTICLE 4, shall apply if the adverse effect of the structural safety or integrity of the Building results from a fire or other casualty.

(B) The construction of such necessary remedial structural support shall be performed by a contractor or contractors jointly selected by the Owners (which selection shall be subject to the approval of the Mortgagees, if and to the extent required under the applicable Mortgages). If the Owners fail to agree upon the selection of a contractor or contractors, the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this ARTICLE 4, provision or construction of necessary remedial structural support shall also include any Maintenance required to remedy or prevent any adverse effect on the structural integrity or safety of the Building.

4.3 **Effect of Delay.** If delay in constructing necessary remedial structural support would endanger the structural safety or integrity of any portion of the Building in the reasonable opinion of the Architect, or responsibility for providing structural support cannot readily be determined or is disputed and it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner of the portion of the Building in which the reduction occurred or is occurring shall, upon not less than ten (10) days' advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide necessary remedial structural support as and wherever required, or the Owners shall jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of the other Owner' provision of any necessary remedial structural support.

ARTICLE 5
SERVICES

5.1 **Services.** Office Owner shall furnish or cause to be furnished the following services to Retail Owner when, as and if required or requested in accordance with the following:

(A) Domestic Water. See Exhibit 5.1(A).

(B) Sanitary and Storm Sewers. See Exhibit 5.1(B).

(C) Fire Protection. See Exhibit 5.1(C).

(D) Heating Equipment. See Exhibit 5.1(D).

(E) Cooling System. See Exhibit 5.1(E).

(F) Electric Service. See Exhibit 5.1(F).

(G) Fire Alarm/Life Safety System. See Exhibit 5.1(G).

(H) In House Engineering and Maintenance. See Exhibit 5.1(H).

(I) Security Surveillance System. See Exhibit 5.1(I).

(J) Service Areas. See Exhibit 5.1(J).

(K) Cabled Communications and Riser. See Exhibit 5.1(K).

(L) Street Level Exterior Maintenance and Snow Removal. See Exhibit 5.1(L).

(M) Roof Maintenance. See Exhibit 5.1(M).

(N) Lobby. See Exhibit 5.1(N).

(O) **Security Guards**. Office Owner shall provide, or contract for the provision of, one or more security guards for the Lobby, Service Areas and patrol of the entire Building (excluding the Retail Portion). Retail Owner shall not reimburse Office Owner for any portion of the cost of the security guards as Operating Expenses. Notwithstanding Office Owner's duty to provide security services hereunder, Office Owner shall not be liable to Retail Owner or Retail Owner's tenants, occupants, licensees, and permittees, for failure to provide security or failure to provide adequate security unless the failure is the result of gross negligence or willful misconduct by Office Owner. Office Owner and Retail Owner may increase or decrease the scope of duties to be provided by the security guards as they shall agree from time to time.

Notwithstanding the above, Retail Owner may, at its sole cost and expense, supplement the services then being provided by the Office Owner; provided, however, any such supplementing of services by Retail Owner shall be performed in a manner so as not to unreasonably interfere with the services being provided by the Office Owner and that the provision of any such supplemental services by Retail Owner which involve any Alterations shall be subject to the provisions of ARTICLE 14 hereof.

5.2 **Change In Services.** The Owners may agree in writing from time to time to modify the procedures for providing services set forth in Section 5.1 above and all the exhibits related thereto or to

discontinue the provision of a service. Any such agreement shall be effective upon the Owners executing and recording an amendment to this Declaration which sets forth the new agreement.

5.3 **Other Services.** Retail Owner may, in its sole discretion, furnish or cause to be furnished other services to Office Owner reasonably required or requested by Office Owner for normal business operations of the Office Portion on terms and conditions mutually acceptable to Office Owner and Retail Owner. Office Owner may, in its sole discretion, furnish or cause to be furnished other services to Retail Owner reasonably required or requested by Retail Owner for normal business operations of the Retail Portion on terms and conditions mutually acceptable to Office Owner and Retail Owner. Once determined, Office Owner and Retail Owner may amend this Declaration to incorporate the terms and conditions agreed to by the Owners regarding these services.

5.4 **Obligation to Furnish Services.** Each Owner obligated to perform services hereunder shall make a good–faith effort to operate its Facilities and furnish all services required under this ARTICLE 5 in a manner consistent with its intended respective use as mixed-use office (or residential and/or hotel), if Office Owner shall, upon reasonable notice to Retail Owner, elect to convert any portion of the Office Parcel to residential and/or hotel use) and retail property, and the level of operation and management of comparable properties in downtown Chicago, Illinois, and in a manner consistent with the standards for Maintenance established in Section 9.1 and Section 9.2 hereof. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this ARTICLE 5, but shall not be liable under this ARTICLE 5 for interruption or inadequacy of service or loss or damage to property or business (including any consequential damages) arising out of such interruption or inadequacy, except as may be provided in Section 5.6 and Section 5.8. Each such Owner obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance or in an Emergency Situation. Each Owner who is obligated to maintain, repair and replace any Facilities under Section 9.1 and Section 9.2 which are connected to other Facilities in the Building, the responsibility for whose Maintenance is the other Owner's under this ARTICLE 5, shall perform its obligations under Section 9.1 or Section 9.2 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under this ARTICLE 5. Where an exception exists to an Owner's obligation to perform Maintenance of Facilities described in an Exhibit to this ARTICLE 5, such exception has been set forth in such Exhibit. In no event shall Office Owner be obligated under this ARTICLE 5 for Maintenance of Retail Easement Facilities or Retail Owned Facilities nor shall Retail Owner be obligated under this ARTICLE 5 for Maintenance of Office Easement Facilities or Office Owned Facilities.

5.5 **Payment for Services.** Payment for services rendered pursuant to this ARTICLE 5 and other charges and fees related to such services shall be made in accordance with the terms and provisions of Exhibit 5.5 attached hereto and made a part hereof.

5.6 **Owner's Failure to Perform Services**.

(A) If an Owner shall fail to perform as required by the terms and conditions of this ARTICLE 5 (except when such failure is caused by the other Owner or by Unavoidable Delay or except when the Owner obligated to perform the service is entitled to discontinue such service pursuant to Section 5.2, Section 5.4, or Section 5.8 hereof) and such failure shall continue for a period of five (5) days' after receipt of written notice thereof to the Defaulting Owner from the Creditor Owner, the Creditor Owner shall have the right to perform the same (without limiting any other rights or remedies of such Owner) until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Building or any of its respective Occupants.

(B) During any period in which the Creditor Owner is performing pursuant to Section 5.6(A) hereof, the Defaulting Owner shall make payments to the Creditor Owner as provided in Exhibit 5.5.

(C) If a dispute exists as to whether the Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under ARTICLE 11 if not resolved within five (5) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate an Owner's rights under Sections 5.6(A) and 5.6(B).

5.7 **Data Unavailable from Metering.** Where the allocation of the cost of a service under ARTICLE 5 is based on usage recorded by meters, and, if at any time the actual allocation of cost of service 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 service shall in good faith make such reasonable determination of costs based on historical data and 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 Projection Notice or Statement (as such terms are defined in Exhibit 5.5) or statement of Cost of Replacement under Exhibit 5.5 relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties for such period; provided further, however, if the Owner receiving such notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. If the Owners fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing Owner's notice, then either Owner may submit the question to the Architect or other expert agreed to by the parties for its advice. The Architect or other expert agreed to by the parties shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect or other expert. Notwithstanding anything to the contrary contained herein, Retail Owner may install, at its own expense, meters for Utilities solely serving the Retail Parcel.

5.8 **Discontinuance of Services.** If, at any time, a Defaulting Owner fails to perform its obligations under ARTICLE 4 or ARTICLE 5 after the expiration of any applicable notice and cure period or to pay a Creditor Owner any sum of money payable to the Creditor Owner within the time frame permitted for payment herein, then the Creditor Owner may send the Defaulting Owner a second notice ("**Second Notice**") which specifically references this Section 5.8 and states that Creditor Owner intends to discontinue providing services in the event that the default is not cured within fourteen (14) days after receipt of the Second Notice. If the default is still not cured by the expiration of the fourteen (14)-day grace period following delivery of the Second Notice, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner may discontinue furnishing services to be furnished by the Creditor Owner under ARTICLE 5 until the default is cured; provided, however, if the Defaulting Owner in good faith disputes the default and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action or initiates an arbitration proceeding (where permitted or provided for under ARTICLE 11) to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner may not discontinue furnishing any such services unless and until it shall finally be determined by arbitration in accordance with ARTICLE 11 hereof or a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay or perform and, thereafter, the default still remains uncured in excess of five (5) days after the determination; and further provided, however, the Creditor Owner may not discontinue any service if discontinuance would cause an Emergency Situation (other than one involving solely economic loss) or hinder steps to remedy an existing Emergency Situation (other than one involving solely economic loss). Notwithstanding that there may be a dispute as to the amount owed,

an Owner shall nevertheless continue making payments as required under this ARTICLE 5 and Exhibit 5.5 until the dispute is resolved, at which time the Owners shall refund any overpayment or pay any deficiency, as applicable, including any interest thereon required under Exhibit 5.5.

5.9 **Replacement of Facilities.** An Owner shall, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better, provided such replacement Facilities do not materially increase the obligations of an Owner in providing services under ARTICLE 5 and do not materially increase the cost to any Owner of any payments required to be made by such Owner (as a Retail Owner or an Office Owner). An Owner may correct the description of the room number or Facilities or references to Parcels described in the ARTICLE 5 Exhibits by notice to the other Owner if such correction is due to error in the description or due to the replacement of such Facilities.

5.10 **Metering of Utilities**. With regard to any utilities being provided directly by a utility provider to an Owner (i.e., not being furnished by one Owner to another Owner), each such Owner shall be obligated to independently arrange for utility service with each such utility provider and to install, at such Owner's sole cost and expense, separate metering or sub-metering devices for the purpose of metering such Owner's usage of such utility service.

5.11 **Façade**.

(A) Office Owner shall be responsible for the Maintenance of that part of the Facade located within the Office Portion, including keeping it in a manner consistent with the Building's landmark status. Retail Owner shall be responsible for the Maintenance of that part of the Facade located within the Retail Portion, including keeping it in a manner consistent with the Building's landmark status. In addition, Office Owner shall be responsible for the Maintenance of the metal and glass system at the entrance to the Lobby, and Retail Owner shall be responsible for the Maintenance of the metal and glass system at the entrances to the Retail Portion. Retail Owner shall also be responsible for all storefront canopies, louvers, metal frames, and glass attached to that part of the Façade located within the Retail Portion, and Retail Owner shall promptly pay all license and permit fees payable pursuant to City code for the use of, or relating to, such storefront canopies. ARTICLE 14 hereof shall govern proposed alterations to the Facade. From time to time, it may become necessary for an Owner to erect scaffolding over the Retail Portion in conjunction with Facade work to be performed by Office Owner. In such instance, such Owner shall obtain, at its expense, all licenses and permits necessary for the scaffolding, and provide copies to the other Owner upon request If the Office Owner is the Owner performing the Façade work, Office Owner shall (i) diligently perform the Facade work in good faith so that the scaffolding is present for the shortest amount of time reasonably possible without incurring overtime charges; and (ii) provide for Retail Owner, its tenants and occupants, reasonable alternate signage on the scaffolding at Office Owner's expense. Any alternate signage shall be subject to the reasonable prior approval of Retail Owner, its tenants and occupants. In the event Office Owner does not proceed with Facade work in good faith and the delay is not caused by an Unavoidable Delay, then Office Owner shall be liable to Retail Owner for Retail Owner's actual and direct, but not consequential, damages incurred as a result of the scaffolding. Office Owner shall be presumed to be acting in good faith if Office Owner is in compliance with applicable City code. Declarant has not granted, and by the recording of this Declaration, Declarant does not intend to grant, a facade easement to the City or to any other party. The boundaries are depicted for informational purposes only. In the event the City requires one report for the entirety of the Façade pursuant to the City's inspection and repair program with respect to the Façade or any other program required by the City or pursuant to any other Laws applicable to the Façade, then Office Owner, in consultation with, and with the reasonable cooperation of, Retail Owner,

shall be responsible for the preparation and submittal of such inspection report or any related or similar documents to the City by Office Owner, and Office Owner shall have the right to engage an architect or other appropriate licensed professional to assist in preparation and submittal of such report or other document.

(B) Notwithstanding anything to the contrary contained above, Retail Owner shall restore that part of the Facade located directly outside the Retail Portion consistent with the remainder of the Façade and in accordance with landmark standards applicable to the Building. In connection with the restoration work, it may become necessary for Retail Owner to erect scaffolding over the Retail Portion in conjunction with Facade work to be performed by Retail Owner. In such instance, Retail Owner shall: (i) obtain, at its expense, all licenses and permits necessary for the scaffolding and furnish copies to Office Owner upon request; and (ii) diligently perform the Facade work in good faith so that the scaffolding is present for the shortest amount of time reasonably possible without incurring overtime charges. Prior to commencing the restoration work, Retail Owner shall provide Office Owner with a budget for such work. Such budget shall be subject to Office Owner's approval within fourteen (14) days of Office Owner's receipt thereof. In the event Office Owner has not approved or given notice to Retail Owner of disapproval within such fourteen (14)-day period, Office Owner's approval shall be deemed given. Within fifteen (15) days after receipt of an invoice from Retail Owner, Office Owner shall reimburse Retail Owner for eighty-five percent (85%) of the Cost of Restoration; provided, however, if Office Owner has acquired the Second Floor East Retail prior to the Façade work being completed by Retail Owner, Office Owner shall reimburse Retail Owner for ninety percent (90%) of the Cost of Restoration. Notwithstanding the foregoing, in the event Retail Owner obtains the Class L and performs the rehabilitation work described in Section 7.5, then this Section 5.11(B) shall have no further force and effect.

5.12 **City Licenses, Permits and Assessments**. Each of Retail Owner and Office Owner shall be responsible, at its sole expense, for obtaining and maintaining in full force and effect all licenses, permits and assessments necessary for the operation of its respective Parcel. Any license, permit or assessment which applies to the entire Building shall be obtained and maintained in full force and effect by Office Owner, and Retail Owner shall reimburse Office Owner for four percent (4%) of the reasonable cost thereof within fifteen (15) days after receipt of an invoice therefor from Office Owner. This Section 5.12 does not include canopy permits or canopy inspections, the responsibility for which shall be borne by Retail Owner.

ARTICLE 6
INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; USE; SIGNAGE; ENVIRONMENTAL AND ENGINEERING REVIEW

6.1 **Indemnity by Owners.** Each Owner (hereinafter in this Section 6.1, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owner (hereinafter in this Section 6.1, the "**Indemnitee**") from and against any and all claims, including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any Person arising from the Indemnifying Owner's negligent use, possession or management of the Indemnifying Owner's portion of the Building, as applicable, or Owned Facilities or activities therein or arising out of the Indemnifying Owner's negligent use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom, but only to the extent the Indemnitee is not insured against (or required pursuant to this Declaration to be insured against) such losses, liabilities, damages, judgments, costs, or expenses under valid and collectible insurance policies. In case any action or proceeding is brought

against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.

6.2 **Liens.** Each Owner (the "**Liening Owner**") shall remove, within thirty (30) days after the filing thereof by a third party that is not an Owner, any mechanics', materialmen's, manager's, broker's or any other similar lien arising by reason of the acts of the Liening Owner, its agents and contractors or any work or materials or services for which the Liening Owner or its agents or contractors has contracted (A) against the other Owner's portion of the Building, or Owned Facilities, or (B) against its own portion of the Building or Owned Facilities if the existence or foreclosure of such lien against its own portion of the Building or Owned Facilities would adversely affect the other Owner (such other Owner in (A) or (B) being the "**Impacted Owner**"). The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if: within said thirty (30) day period, (i) such lien cannot be foreclosed, and (ii) the Liening Owner (a) shall in good faith diligently proceed to contest the same by appropriate actions or proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien, and (b) shall deliver to the Impacted Owner either: (1) cash or a surety bond from a responsible surety company reasonably acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (2) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. An endorsement by the Impacted Owner's title insurance company over such lien claim to the Impacted Owner's title insurance policy shall be deemed an indemnity reasonably acceptable to the Impacted Owner, and shall satisfy the requirements of clause (b) above. In any case, the Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure. If the Liening Owner fails to comply with the foregoing provisions of this Section 6.2, thereby becoming a Defaulting Owner, then the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all reasonable costs and expenses (including reasonable attorneys' fees and litigation expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under this Section 6.2.

6.3 **Compliance With Laws**. Each Owner shall:

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

(B) comply with all rules, regulations and requirements of any insurance rating bureau with an interest in the Property or any portion thereof, or the requirements of any insurance coverage on the other Owner's portion of the Property or Owned Facilities if noncompliance by it with respect to its respective portion of the Property or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by the

other Owner or the premiums of any policy of insurance maintained by both Owners (unless the non-complying Owner pays all such increases), or (ii) render the other Owner's portion of the Property or Owned Facilities uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring the other Owner's portion of the Property or Owned Facilities; and

(C) deliver to the other Owner, within thirty (30) days after receipt, a copy of any written report, citation or notice having an effect on or relating to compliance of the Property with Laws or rules, regulations and requirements of any insurance rating bureau.

6.4 **Use**. No use shall be permitted in the Property which does not comply with Law or would increase significantly the cost of insurance maintained by the other Owner. In addition, Office Owner shall not use or permit or allow any use of the Office Parcel below the third floor that would be competitive in Retail Owner's reasonable discretion with any then existing use of any tenant in the Retail Parcel. As of the Effective Date, Office Owner acknowledges that Bank of America is entitled under the Bank of America Lease to a variety of rights that relate to the Retail Parcel (other than the First Floor East Retail) and the Office Parcel, and Office Owner agrees that it will comply, and cause its Permittees to comply, with the terms of the Bank of America Lease as they relate to the Office Parcel, including, as of the Effective Date, without limitation, the exclusivity provisions set forth in Section 3.2(b) of the Bank of America Lease, the right of first opportunity set forth in Rider No. 2 of the Bank of America Lease and the right of first refusal to purchase set forth in Rider No. 3 of the Bank of America Lease. Retail Owner represents and warrants that it has provided Office Owner with a true, correct and complete copy of the Bank of America Lease. In the event that Bank of America is no longer a tenant of the Retail Parcel, Office Owner acknowledges and agrees that it will nonetheless not violate the exclusivity provisions set forth in either (A) Section 3.2(b) of the Bank of America Lease unless, after the expiration or termination of the Bank of America Lease, Retail Owner has entered into a new lease for any of the space Bank of America occupied for a term of not less than ten (10) years with a tenant that is not a financial institution, or (B) any new lease between Retail Owner and a financial institution.

6.5 **Signage**.

(A) Office Owner or its designee or assign shall have the right to install and maintain signage on the Roof, signage on the first floor outside the Lobby exterior or signage visible from the interior of the second floor of the Office Portion, provided such first floor exterior signage shall only be for tenants of floors above the second floor and such second floor interior signage shall only be for tenants of the second floor of the Office Portion within their space, shall not exceed more than one (1) sign for the west side of the second floor of the Office Portion and, in the event Office Owner has acquired the Second Floor East Retail) one (1) sign facing north and one (1) sign facing east for the east side of the second floor of the Office Portion that does not exceed ten (10) square feet each and shall be in compliance with City code and any landmark (including, without limitation, Class L) requirements. Office Owner may not install any signage on the exterior of the Building except on the first floor outside the Lobby and the Roof. Any and all such exterior and interior signage shall: (i) comply with applicable Law, (ii) be professionally designed and fabricated, and (iii) be installed and operated in a first-class manner. No such signage shall contain any neon or similar lighting, strobe lights, moving parts or day-glow colors: provided, however, such signage shall only contain back-lighting as referenced on Exhibit 6.5. Office Owner shall have sole responsibility, and sole discretion, for exterior and interior Lobby entrance signage including office tenant plaques and the Lobby canopy. Building naming rights are addressed in Section 20.8 below. Any and all signage for the Office Portion shall be in compliance with the signage standards outlined on Exhibit 6.5. Notwithstanding the foregoing,

no signage installed on the Office Portion shall diminish the allowable area of signage permitted for the Retail Portion under the City code.

(B) Retail Owner shall have the right to install and maintain signs on the Retail Portion for the Occupants of the Retail Portion, provided such signage shall only be for tenants of the Retail Portion and shall be in compliance with City code and any landmark requirements. Retail Owner shall ensure that all such signage comports with uniform standards in order to enhance the visual impact to the public and for the mutual benefit of all Occupants. All permits and/or approvals by governing authorities for signs and their installation shall be obtained by the sign installer at Retail Owner's or the appropriate Occupant's expense. Each Occupant's primary sign shall be store identity (corporate or official trade name) signs only, shall be placed directly above the individual storefronts and shall be restricted to an area as directed by Retail Owner. Primary fascia signs shall be completely installed and operating by the day an Occupant of the Retail Portion opens for business. All Retail Portion Occupant identification signs shall: (i) be subject to the prior written approval of Retail Owner, (ii) comply with applicable Law, (iii) be professionally designed and fabricated, and (iv) be installed and operated in a first-class manner. No such signage shall contain any neon or similar lighting, strobe lights, moving parts or day-glow colors; provided, however, such signage shall only contain back-lighting as referenced on Exhibit 6.5. At the rear service door of each Occupant of the Retail Portion's space, that Occupant may provide a sign, approved by Retail Owner in accordance with Law. Any and all signage for the Retail Portion shall be in compliance with the signage standards outlined on Exhibit 6.5.

(C) Each Owner, at its expense, shall (i) Maintain its signage and utility facilities and structured supports servicing the signage in good condition and repair, and (ii) pay for all utilities consumed in connection therewith.

Notwithstanding the foregoing provisions of this Section 6.5, all existing signage used in connection with the current operations of the Office Portion and the Retail Portion are hereby deemed approved by the Owners hereunder as to the above-described requirements.

6.6 **Environmental and Engineering Review.** Each Owner ("**Inspecting Owner**") shall have the right in certain instances listed below to obtain from an environmental engineer or an inspecting architect or engineer of the Inspecting Owner's choice and at the Inspecting Owner's own cost and expense, an audit, review, assessment or report (each referred to as a "**Review**") relating to the Property, which Review may include tests or inspections of the other Owner's portion of the Property (other than any portion of the Property occupied by any Occupant), as part of such Review. The Inspecting Owner shall use reasonable efforts to minimize the disruption of the other Owner's operation of business or use in its portion of the Property, shall repair any damage to property of the other Owner caused by a Review, and shall be subject to the indemnification obligations contained in Section 6.1 above. The instances when an Owner may obtain a Review necessitating tests or inspections of the other Owner's portion of the Property are:

(A) if the Inspecting Owner has entered into or will enter into a contract to sell, lease, finance or refinance its property in which a requirement of said contract is a Review; or

(B) if the Inspecting Owner's then current Mortgagee has requested a Review; or

(C) if a Review is required by Law; or

(D) if the Inspecting Owner, in good faith, believes that the other Owner may have breached the provisions of Section 6.3 or Section 6.4 as it relates to the matters which could be disclosed by a Review or that the Inspecting Owner may be adversely affected or subject to liability, as a result of matters which could be disclosed by a Review.

6.7 **Zoning**.

(A) Without limiting the provisions of this Section 6.7(A), neither the Office Owner nor the Retail Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Building, or (iii) take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance or the Existing Zoning, as said ordinances may be amended from time to time.

(B) Applications for variations, changes, modifications or amendments to the provisions of the Chicago Zoning Ordinance and the Existing Zoning applicable to the Property which do not change the permitted use under such ordinances or this Declaration or the Existing Zoning and do not adversely affect the other Owner (provided it does not create a permitted non-conforming use), may be filed and processed solely by the Owner or Owners of the portion of the Building directly affected by such application and shall not require the joinders of the other Owner. Nothing contained in this Section 6.7(B) shall prohibit or restrict the right of the Owner of the Office Property or any portion thereof from applying for, and obtaining, re-zoning or special use permit(s) with respect to the Office Property, or any portion thereof, to allow for the operation of the Office Property, or any portion thereof, for residential and/or hotel purposes so long as none of the foregoing precludes or adversely affects any use of the Retail Property as currently permitted under applicable Laws. Nothing contained in this Section 6.7(B) shall prohibit or restrict the right of an Owner of the Retail Property or any portion thereof from applying for, and obtaining, re-zoning or special use permit(s) with respect to the Retail Property, or any portion thereof, so long as none of the foregoing precludes or adversely affects any use of the Office Property as currently permitted under applicable Laws.

(C) Each Owner shall execute such applications or other instruments as may be necessary to obtain any zoning variation, change, modification or amendment conforming with the provisions of this Section 6.7; provided, however, the Owner requesting such zoning variation, change, modification 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.

ARTICLE 7
REAL ESTATE TAXES

7.1 **Separate Real Estate Tax Bills.** The Retail Property and the Office Property are not separately assessed and taxed by the Cook County, Illinois Assessor (the "**Assessor**"), and Retail Owner shall file a tax petition with the Assessor promptly after the conveyance of the Office Parcel by Declarant to obtain separate real estate tax identification numbers and separate real estate tax bills for: (A) the Office Property as a group of one or more separate parcels of real estate, separate and apart from the Retail Property, and (B) the Retail Property as a group of one or more separate parcels of real estate, separate and apart from the Office Property. Retail Owner shall engage such counsel and other consultants as Office Owner may reasonably select. Office Owner shall contribute to such fees and other costs of such counsel and other consultants based upon the percentage of Real Estate Taxes for which Office Owner is responsible pursuant to Section 7.2(A) and if the Assessor or an Owner requests information or advice from the other Owner to allocate the assessed valuation for land or improvements

(other than information relating to income or expenses of an Owner's property) the Owners shall consult and reasonably cooperate with one another regarding such information and advice to be furnished to the Assessor.

7.2 **Payment of Real Estate Tax Bills**.

(A) **Allocation of Real Estate Taxes.** Whenever the Retail Property and the Office Property are separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes and special assessments when due. Until separately assessed and taxed, the Retail Property shall be responsible for fifteen percent (15%) of the Real Estate Taxes (the "**Retail Tax Share**") and the Office Property shall be responsible for eighty-five percent (85%) (the "**Office Tax Share**"); provided, however, in the event Office Owner has acquired the Second Floor East Retail, the Office Tax Share shall be ninety percent (90%), and the Retail Tax Share shall be ten percent (10%). In the event Retail Owner shall receive any Real Estate Tax bills, it shall promptly deliver the bills to Office Owner.

(B) **Payments of Taxes.** Until the Office Property and the Retail Property are separately assessed and taxed for Real Estate Taxes, Office Owner, within fifteen (15) days after Office Owner's receipt of a tax bill for which Retail Owner is responsible or shares responsibility pursuant to Section 7.2(A), shall deliver to Retail Owner a copy of said tax bill. Beginning on or about the Effective Date and during the period thereafter until the Office Property and the Retail Property are separately assessed and taxed by the Assessor, Office Owner shall make reasonable estimates, forecasts or projections (collectively, the "**Tax Projection**") of the amounts which Office Owner and Retail Owner shall each owe as and for their respective Tax Shares for any full or partial calendar year. Retail Owner shall deposit into an escrow account with Chicago Title Insurance Company or such other title insurance company located in Chicago, Illinois from time to time designated by Office Owner (the "**Tax Escrow**") an amount equal to one-twelfth ($1/12^{th}$) of the Retail Tax Share based upon the then most recent Tax Projection on or before the first day of each calendar month, and shall promptly provide to Office Owner evidence of such deposit. Office Owner shall also be obligated to deposit into the Tax Escrow an amount equal to one-twelfth ($1/12^{th}$) of the Office Tax Share, based upon the then most recent Tax Projection on or before the first day of each calendar month, and shall promptly provide Retail Owner evidence of such deposit. The failure of Office Owner to provide a Tax Projection for any particular calendar year shall not relieve Retail Owner or Office Owner from its obligation to continue to pay such monthly amounts as and for its Tax Share based upon the then most recent Tax Projection, until Office Owner delivers to Retail Owner an updated Tax Projection for the subject full or partial calendar year. On or about April 1 following the end of each calendar year, or at such time as Office Owner shall be able to determine the actual amount of Real Estate Taxes for the calendar year last ended, Office Owner shall notify Retail Owner in writing of such actual amounts. If such actual amount exceeds the Tax Projection for such calendar year, then each Owner, within ten (10) days after the date of such written notice to Retail Owner, shall deposit into the Tax Escrow an amount equal to the excess of its Tax Share payable for the calendar year last ended based upon the actual Real Estate Taxes for such year over the total payments made by such Owner as and for its Tax Share during such calendar year. If the total payments by an Owner as and for its Tax Share during such calendar year exceeds the amounts thereof payable for such year based upon the actual Real Estate Taxes for such calendar year, then such excess shall be credited to such Owner's installments of monthly payments payable by such Owner as and for its Tax Share payable after the date of Office Owner's notice until such excess has been exhausted, or Office Owner may elect to refund out of the Tax Escrow to itself and to Retail Owner the respective overpayments (or the balance thereof, as applicable) promptly after receipt of the final installment of the tax bill for the year in question. Office Owner shall have the right to, and shall

timely, either withdraw from the Tax Escrow such funds necessary to pay such tax bills to the appropriate taxing authority prior to delinquency, or to cause the escrowee of the Tax Escrow to pay such tax bills. So long as Retail Owner has paid the Retail Tax Share for Real Estate Taxes in accordance with this Section 7.2(B), Office Owner shall deliver to Retail Owner reasonable evidence (e.g., tax receipts, cancelled checks) evidencing that the Office Tax Share and the Retail Tax Share have each been paid prior to the imposition of any interest or penalties. If any dispute arises out of this Section 7.2(B) and is not resolved within ten (10) days after written notice thereof from one Owner to the other, then such dispute shall constitute an Arbitrable Dispute which may be submitted to Arbitration pursuant to ARTICLE 11; provided, however, in no event shall Retail Owner's obligation to pay Retail Owner's Tax Share in accordance with this Section 7.2(B) be excused or postponed pending the resolution of such dispute.

(C) **Tax Protests.** Until separate tax bills are obtained, Office Owner may, and upon the reasonable good faith request of Retail Owner shall, in good faith and with reasonable diligence, attempt to obtain a reduced assessed valuation of the Property, protest taxes or take other action for the purpose of reducing real estate taxes thereon with respect to any period that the Office Property and the Retail Property are not separately assessed and taxed. Office Owner agrees to consult with Retail Owner in this regard. In such event, Retail Owner shall reasonably cooperate with Office Owner in such attempt and shall share in the costs (including fees of attorneys, appraisers and tax consultants) incurred in proportion to its share of the real estate taxes calculated as provided in Section 7.2; provided, however, if the benefit sought or obtained is clearly disproportionate to the proportionate share provided in Section 7.2 (such as a reduction in assessed valuation of one Parcel only), then such costs shall be shared in proportion to the benefit sought or obtained. If it is anticipated that Office Owner will incur any fees of attorneys, appraisers or tax consultants, the fee arrangements in connection with the tax protest shall be subject to the written approval of Retail Owner, which approval shall not be unreasonably withheld. Any tax refund received as a result of such action shall be apportioned between the Owners based on the reduction in assessed valuations obtained or other equitable allocation. Each Owner shall have the independent right to protest taxes and other charges to the extent the same affect only such Owner's portion of the Property, at any time such portions of the Property are separately assessed and taxed.

7.3 **Failure to Pay Real Estate Taxes.** If any Owner (the "**Defaulting Owner**") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this ARTICLE 7, and the failure to pay same will result in the imposition of a lien on, or forfeiture or foreclosure of, any other Owner's portion of the Property, or subjects the other Owner to personal liability for this obligation, then such other Owner (the " **Creditor Owner**") may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty thereon, with interest thereon as hereinafter provided, and the Creditor Owner shall also have a lien against the Defaulting Owner's portion of the Property in accordance with ARTICLE 10.

7.4 **Reference to Taxes in Leases or Contracts.** For purposes of this Declaration, and any documents or instruments, such as leases for space in the Retail Portion or the Office Portion referring to the allocation of real estate taxes pursuant to this Declaration, the real estate taxes allocated to a portion of the Property shall mean those taxes assessed and payable with respect to such portion of the Property, as provided in this ARTICLE 7.

7.5 **Class L and City Landmark Designation**.

(A) Retail Owner desires to cause the Assessor to grant the Property Class L and to seek designation of the Building as a landmark by the City (the "**City Landmark Designation**"). In connection therewith, Retail Owner may (but is not obligated to) file the application and all other required documentation with the Assessor and the City and shall provide Office Owner with evidence of the materials filed and the date of the filing. Retail Owner shall engage such counsel and other consultants as Office Owner may reasonably select. Office Owner shall reasonably cooperate with Retail Owner in connection with obtaining the Class L and the City Landmark Designation, including, without limitation, providing any information to the Assessor and the City.

(B) In the event Retail Owner decides to make the required filings and if Retail Owner desires that Office Owner share in the application and related costs and the costs of rehabilitation (which shall include all scaffolding costs) of the Façade necessary to obtain the Class L, Retail Owner shall notify Office Owner of the market value for the Property, excluding the market value of the land component, as determined by the Assessor for the year immediately preceding the commencement of the rehabilitation work and provide Office Owner with a budget for the rehabilitation work. Within sixty (60) days of receipt of such information, Office Owner shall notify Retail Owner whether Office Owner elects to share in the reasonable costs of the rehabilitation of the Façade. In the event Office Owner has not given notice that it will not share in such costs within such sixty (60) day period, Office Owner shall be deemed to have elected to not share in such costs. Any election by Office Owner shall be deemed irrevocable except with Retail Owner's consent.

(C) In the event Office Owner elects to share in the application and related costs and the costs of rehabilitation, Retail Owner agrees to use its commercially reasonable efforts to complete the required rehabilitation work to the Façade within one (1) year of the filing with the Assessor. Within fifteen (15) days after receipt of an invoice from Retail Owner, Office Owner shall reimburse Retail Owner for eighty-five percent (85%) of such reasonable costs; provided, however, if Office Owner has acquired the Second Floor East Retail prior to the Façade work being completed by Retail Owner, Office Owner shall reimburse Retail Owner for ninety percent (90%) of the cost of rehabilitation.

(D) After the Class L has been obtained, Office Owner shall, at its sole expense, timely make all filings necessary in order to maintain or renew the Class L and the City Landmark Designation. Within fifteen (15) days after receipt of an invoice from Office Owner, Office Owner shall reimburse Retail Owner for eighty-five percent (85%) of its cost of obtaining the Class L and the City Landmark Designation; provided, however, if Office Owner has acquired the Second Floor East Retail prior to the Façade work being completed by Retail Owner, Office Owner shall reimburse Retail Owner for ninety percent (90%) of such costs.

ARTICLE 8
INSURANCE

8.1 **Insurance Required.** Retail Owner and Office Owner shall procure and maintain the following insurance:

(A) **Real and Personal Property** – Office Owner shall keep the Office Property (including that portion of the Façade located within the Office Parcel), Office Owned Facilities, the Retail Property (including that portion of the Façade located within the Retail Parcel) and

Retail Owned Facilities (exclusive of any personal property owned by tenants or others) insured on an "all risk" broad form coverage basis for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof, less a reasonable deductible, and boiler and machinery insurance on a comprehensive, blanket and repair and replacement basis, all in such amounts and with such deductibles (which shall not be less than $25,000 or more than $50,000) (in 2015 Equivalent Dollars) as may be carried by prudent owners of similar buildings in downtown Chicago, Illinois, as mutually agreed by Office Owner and Retail Owner and shall pay all premiums for such coverage. Such policies shall be endorsed with a replacement coverage endorsement (waiving any applicable co–insurance clause) and shall include business interruption coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Office Owner shall apportion the Insurance Costs based on the manner in which the insurance company has underwritten the risks or as otherwise provided below. Retail Owner shall pay to Office Owner the portion of the Insurance Costs so apportioned to the Retail Property by such insurance company. The Insurance Costs shall be part of Operating Expenses. If Office Owner is unable to determine the manner in which such insurance carrier has underwritten the risks, then the Insurance Costs shall be apportioned by Office Owner between the Office Property and the Retail Property based upon the reasonable advice of an insurance advisor engaged by Office Owner; provided, however, in the event Retail Owner does not agree with such apportionment by the insurance carrier or Office Owner, it shall be an Arbitrable Dispute. If the Insurance Costs are not apportioned based on the manner in which such insurance carrier has underwritten the risk, and Retail Owner objects to the manner in which Office Owner has apportioned such Insurance Costs, then Retail Owner shall give Office Owner written notice of such objection no later than fourteen (14) days from the date Retail Owner receives notice of such apportionment from Office Owner (time being of the essence), and Office Owner and Retail Owner shall use commercially reasonable efforts to resolve such question. If the parties are unable to resolve such question within thirty (30) days from the date Office Owner received Retail Owner's written notice of objection, then the question of apportionment of such Insurance Costs shall constitute an Arbitrable Dispute. Notwithstanding Retail Owner's objection to the apportionment of such Insurance Costs by Office Owner, Retail Owner shall pay Office Owner the full amount of Retail Owner's share of Insurance Costs as part of Operating Expenses pursuant to Exhibit 5.5 as determined by Office Owner, subject to readjustment at such time as any disagreement relating to the apportionment of the Insurance Costs may be resolved in favor of Retail Owner (i.e., through mutual agreement of the Owners or based on a decision of such Arbitrable Dispute). In addition, Office Owner shall obtain and maintain in full force and effect the foregoing types of insurance for all Shared Systems, and Retail Owner shall reimburse Office Owner for Retail Owner's Percentage (as set forth in the various 5.1 Exhibits) of such shared costs in accordance with the billing procedures set forth in Exhibit 5.5. Retail Owner shall pay the portion of the premiums and other costs for such insurance allocated to the Retail Portion. Office Owner shall pay for the portion of the premiums and other costs for such insurance allocated to the Office Portion.

(B) **Public Liability** – Each Owner shall (i) insure against public liability claims and losses on a commercial general liability form with broad form coverage endorsements covering claims for personal and bodily injury, or property damage occurring as a result of operations on the Property (including contractual liability covering obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), and (ii) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage for limits, of not less than $1,000,000 (in 2015 Equivalent Dollars) combined single limit for personal and bodily injury or property damage and with an amount of not less than $5,000,000 (in 2015 Equivalent Dollars) of umbrella coverage.

(C) **Builder's Risk** – Each Owner shall carry or shall cause its contractors to carry "all risk" builder's risk insurance for not less than the completed value of the work then being performed by such Owner or Owners under ARTICLE 4, Section 9.3 or Section 9.4 or for any Alterations which require the other Owner's consent under Section 14.1. Such insurance shall include coverage for items stored off–site and items in transit for an amount sufficient to cover fully any loss. Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of similar buildings in downtown Chicago, provided an Owner's compliance with a Mortgagee's requirement for builder's risk insurance shall constitute acceptable compliance with this Section. Coverage under this Section 8.1(C) shall only be required to the extent such coverage is not already provided within the property coverage under Section 8.1(A).

(D) **Worker's Compensation** – Each Owner shall, or cause its contractors performing work at the Property to, carry worker's compensation insurance in amounts as required by Law and employer's liability, insurance in not less than the following amounts: bodily injury by accident, $1,000,000 (in 2015 Equivalent Dollars) each accident; bodily injury by disease, $1,000,000 (in 2015 Equivalent Dollars) each employee.

(E) **Personal Property** – Each Owner shall separately insure any personal property within such Owner's Parcel, except for items defined as a Facility or attached to the Building and covered under the provisions of Paragraph 8.1(A). Replacement cost shall be determined by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause, waiving any applicable co-insurance clause, in accordance with such determination or appraisal.

8.2 **Insurance Companies.** Insurance policies required by Section 8.1 hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-/VIII (or such lesser rating as the Owners and Mortgagees may agree in writing) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service or other appropriate financial rating agency or service. If separate insurance companies provide the coverages required pursuant to Sections 8.1(B) and 8.1(C), then all such companies shall coordinate their coverages with the other, to insure that there are no gaps in coverage, and any disputes regarding coverages will not delay adjustments of loss and payments to the insureds.

8.3 **Insurance Provisions.** Each policy described in Section 8.1 (other than Section 8.1(D)) hereof: (A) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (B) shall insure as "additional insureds" Retail Owner and/or Office Owner and their respective Mortgagees, using a long form loss payable (except that the Owners other than the primary insured shall be "additional insureds" under liability insurance policies); (C) shall provide (except for liability insurance described in Section 8.1(B), for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party, for loss occurring to the property insured under the policy; (D) shall provide, except for liability insurance required by Section 8.1(B), that all losses payable thereunder shall be paid to the Depositary in accordance with the terms of ARTICLE 16 hereof, unless the Owners otherwise agree; (E) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, expiration, nonrenewal or material modification thereof to Mortgagees, the Owners and all other insureds thereunder; (F) shall not include a co-insurance clause; (G) shall

provide coverage on an occurrence basis, rather than a claims made basis; (H) insurance maintained by Retail Owner or Office Owner alone and not as part of a joint policy may be carried on a "blanket" basis with other policies so long as the blanket policies specify the amount of coverage allocated to the Retail Portion and the Office Portion, as the case may be; and (I) shall include a standard mortgagee endorsement and loss payable clause in favor of the Mortgagees reasonably satisfactory to them (except for the liability insurance required by Section 8.1(B)). Nothing contained herein shall prohibit an Owner from passing through amounts paid by that Owner for insurance as operating costs under tenant leases so long as each Owner remains primarily liable for its obligations under this ARTICLE 8.

If, by reason of any failure by an Owner to comply with any provisions of this Declaration or a change in the use of an Owner's Property resulting in an increased insurance risk, any Insurance Costs for which the other Owner is fully or partially responsible under this Declaration increases above the amount which would have been applicable if such failure or change of use (as applicable) had not occurred, then the Owner responsible for such increase shall reimburse the other Owner, on demand, for the increase of Insurance Costs attributable to such failure or change of use (as applicable) on the part of such Owner.

8.4 **Limits of Liability.** Insurance specified in this ARTICLE 8 or carried by the Owners shall be jointly reviewed, but no more often than annually (unless there is a substantial change in the Building or operations conducted in the Building), 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 covered and the financial responsibility of the insurers. Based upon said review, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming any increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of the Owners. The Owners may agree to employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

8.5 **Renewal Policies.** Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by an Owner to the other Owner at least thirty (30) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this ARTICLE 8 or pay its share of the premiums or other costs for any joint policies, then the other 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 ten (10) days after the Creditor Owner's written demand therefore.

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

8.7 **Self-Insurance.** Notwithstanding anything to the contrary contained in this ARTICLE 8, an Owner (or the beneficiary thereof in the event an Owner is a land trust) having a Tangible Net Worth

in excess of (A) $100,000,000 (in 2015 Equivalent Dollars) plus (B) the amount for which such Owner is responsible for insuring under Section 8.1(B), shall not be required, at any time that such net worth standard is met, to obtain and pay for insurance coverage from a third party as required under Section 8.1(B) and may self-insure the risks under Section 8.1(B); provided that the coverage self-insured (i.e., amounts which would otherwise be required to be insured by a third party insurer under Section 8.1(B)) shall not exceed ten percent (10%) of the said Tangible Net Worth of such Owner (or the beneficiary thereof) and such self-insurance shall comply with any applicable Law. Prior to an Owner exercising its right to self-insure, that Owner shall deliver to the other Owner current, certified or audited financial statements evidencing the required Tangible Net Worth. Thereafter, the self-insuring Owner shall provide the other Owner updated certified or audited financial statements evidencing the required Tangible Net Worth at least annually and in any instance within fifteen (15) days of receipt of a written request for certification from the other Owner. At any time such net worth standard is not met or no longer met, the insurance requirements under Section 8.1(B) shall apply. Self-insured amounts shall be deposited with the Depositary promptly following the occurrence of the insured event, and disbursed in the same manner as insurance proceeds. Tangible Net Worth" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises.

8.8 **Owner's Insurance Required by Mortgagee.** If an Owner's Mortgagee requires that Owner to comply with any insurance requirements over and above the requirements set forth in this ARTICLE 8, then that Owner will be required to comply with not only the requirements set forth above but also that Owner's Mortgagee's requirements. Neither Owner will be required to comply with the insurance requirements of the other Owner nor the other Owner's Mortgagee provided it is in compliance with the insurance requirements contained above in this ARTICLE 8.

ARTICLE 9
MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

9.1 **Maintenance of Retail Portion.** Except: (A) as expressly provided in ARTICLE 5 hereof (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Retail Portion or hereinafter in this ARTICLE 9; (B) in the event of fire or other casualty; and (C) as provided in and without limiting or diminishing such Owner's obligations under ARTICLE 4; Retail Owner shall, at its sole cost and expense, maintain and keep the Retail Portion, including all Facilities located in the Retail Portion (other than the Office Easement Facilities and Office Owned Facilities), and the Retail Easement Facilities and Retail Owned Facilities in good order and condition, comparable to other similar buildings in downtown Chicago, 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 the condition required hereunder, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Retail Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its portion of the Property. With respect to the Maintenance of the Retail Portion or Facilities located in the Office Portion, Maintenance expressly includes the right of entry with reasonable prior notice (except in an Emergency Situation) by the party seeking to perform Maintenance, and its contractors, agents and employees into any areas thereof (but excluding any space occupied by any Occupant under any lease or other tenancy agreement) and the right to perform Maintenance as and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however that the responsibility to repair any damage as a result of performing Maintenance under this Declaration

shall be limited to restoring the damaged area to the building standard condition existing immediately prior to such damage.

9.2 **Maintenance of Office Portion.** Except: (A) as expressly provided in ARTICLE 5 hereof (and related Exhibits) relating to Maintenance of certain Facilities and other areas of the Office Portion, or hereinafter in this ARTICLE 9; (B) in the event of fire or other casualty; and (C) as provided in and without limiting or diminishing such Owner's obligations under ARTICLE 4, Office Owner shall, at its sole cost and expense, maintain and keep the Office Portion, including all Facilities located in the Office Portion (other than the Retail Easement Facilities and Retail Owned Facilities), and the Office Easement Facilities and Office Owned Facilities in good order and condition, comparable to other similar buildings in downtown Chicago, 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 and non-structural components thereof, or involve ordinary or extraordinary, repairs or replacements, necessary to keep the same in the condition required hereunder, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Office Owner further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to its portion of the Property. With respect to the Maintenance of the Office Portion or Facilities located in the Retail Portion, Maintenance expressly includes the right of entry with reasonable prior notice (except in an Emergency Situation) by the party seeking to perform Maintenance, and, its contractors, agents and employees into any areas thereof (but excluding any space occupied by any Occupant under any lease or other tenancy agreement) and the right to perform Maintenance as, and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however that the responsibility to repair any damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to the building standard condition existing immediately prior to such damage.

9.3 **Damage Affecting Only Retail Portion or Office Portion.** If any portion of the Building is damaged by fire or other casualty and (A) to the extent such damage occurs within the Retail Portion only and does not affect Office Easement Facilities or Office Owned Facilities or (B) to the extent such damage occurs within the Office Portion only and does not affect Retail Easement Facilities or Retail Owned Facilities, 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 17 hereof, be entitled to withdraw any insurance proceeds (including deductible amounts and self-insurance amounts) held by the Depositary, by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration obligation hereunder, and such failure adversely and materially affects an Easement in favor of the other Owner or services to be furnished the other Owner under ARTICLE 5 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such work of repair or restoration 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 17 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 reasonable costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds. Repair and restoration under this Section 9.3 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the

other Owner's consent if such consent would not otherwise be required under ARTICLE 14. Any such repair and restoration under this Section 9.3 shall be performed in a manner so that the damaged portion of the Property is rebuilt to the extent practicable in a manner such that it is functionally equivalent to the condition of said damaged portion prior to the casualty, unless prohibited by Law or unless the other Owner otherwise agrees.

9.4 **Joint Damage.** If the Building is damaged by fire or other casualty and if the provisions of Section 9.3 hereof are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (A) or (B) of Section 9.3, then, to the extent such damage does not fall within any of such categories, the repair and restoration of only that portion of such damage which does not fall within those categories shall be the joint responsibility of the Owners and that portion of the work which does fall within any such category shall continue to be governed by Section 9.3. The shared repair and restoration work not governed by Section 9.3 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 contractor or contractors jointly selected by the Owners, from contractors who are licensed to do business in the State of Illinois and who have substantial experience in the construction and renovation of properties of similar age and type of construction in downtown Chicago. The contractor selection shall be subject to the approval of the Mortgagees if the approximate cost of the repair and restoration is greater than One Million Dollars ($1,000,000) (in 2015 Equivalent Dollars) or such lesser amount as may be required by the terms of any Mortgage. With regard to the shared work, participation by the Owners in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of, its actual areas or Facilities damaged. In the event the Owners fails to agree upon the selection of a contractor or contractors with regard to shared work, 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 an Arbitrable Dispute. The plans and specifications for all such shared repair and restoration work shall be prepared by the Architect, unless the Owners otherwise agree upon another person or entity to prepare them in accordance with instructions given by the Owners. Such plans and specifications shall provide for the damaged portion of the Building to be rebuilt as nearly identical as commercially practicable to the damaged portion of the Building as was constructed prior to the damage, unless prohibited by Law or unless the Owners otherwise agree. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to 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 (or other architect or engineer preparing the plans and specifications), and the Architect (or other architect or engineer preparing the plans and specifications) is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owners (whose approval shall not be unreasonably withheld, conditioned or delayed), as such repair and restoration progresses, to disburse in accordance with ARTICLE 17 hereof, the insurance proceeds (including deductible and self-insured amounts) held by the Depositary and any other monies deposited with the Depositary pursuant to Section 9.5 hereof for application against the cost and expense of any such repair and restoration.

9.5 **Cost of Repairs.** If the cost and expense of performing any repair and restoration provided for in Section 9.4 hereof shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible and self-insured amounts (self-insured amounts being those amounts not required to be insured by a third party insurer pursuant to Section 8.7), then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the Owners: first, in such proportion as may be required by the provisions of ARTICLE 5 providing for allocation of replacement costs of Facilities and for the Cost of Replacement of Easement Facilities, until such costs are recouped, and second, in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Building and Owned Facilities. Notwithstanding

the foregoing, if an Owner (not entitled to self-insure) has not carried the insurance required under ARTICLE 8 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which the other Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

9.6 **Deposit of Costs.** In any instance of repair or restoration pursuant to Section 9.4 or Section 9.5 hereof, Retail Owner or Office Owner, if such Owner has an interest in the repair or restoration, may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum or a guaranteed maximum price has theretofore been executed. If said estimate, stipulated sum guaranteed maximum price or actual amount incurred in performing repair or restoration exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then an Owner may, at any time, give notice to the other Owner demanding that such other Owner deposit with the Depositary the amount of such excess cost and expense attributable to such other Owner pursuant to Section 9.5. An Owner self-insuring any risk as permitted under Section 8.7 shall deposit with the Depositary the entire cost and expense attributable to such Owner, and not just excess costs. An Owner maintaining deductible amounts shall deposit the deductible amounts. In lieu of depositing its share of such excess amount or such self-insured or deductible amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depositary security for payment of its share reasonably acceptable to the other Owner. 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, unconditional 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, self-insured or deductible 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 9.6, or fails to deliver the security provided for above within ten (10) days after receipt of the other Owner' written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

9.7 **Excess Insurance Proceeds.** Upon completion of the repair and restoration of any damage to the Building, (A) any remaining insurance proceeds of such damage shall be refunded to each Owner in proportion to the ratio of (i) the insurance proceeds attributed and applied to such Owner's Improvements and Owned Facilities by the insurer to (ii) the total insurance proceeds made available by the insurer for the repair and restoration, and (B) any amounts contributed by such Owner for repair and restoration of its Improvements and which were not applied for such repair and restoration shall be refunded to such Owner. For purposes of this Section 9.7, insurance proceeds include deductible amounts and amounts contributed by a self-insured Owner.

9.8 **Agreement Not to Repair.** If the Building is destroyed or substantially damaged, Retail Owner and Office Owner may, at their option, agree in writing not to rebuild, repair or restore the Building, subject to the written approval of the Mortgagees (which approval may be granted or withheld by each such Mortgagee in its sole and absolute discretion). Upon agreement not to rebuild, the Building

shall be demolished in compliance with all applicable Laws. In such event the available insurance proceeds, other than insurance proceeds used to demolish the Building, shall be refunded to each Owner in the ratio of insurance proceeds attributed to such Owner's Improvements and Owned Facilities to the total insurance proceeds paid by reason of such damage; provided, however, in the event Retail Owner does not agree with such ratio, it shall be an Arbitrable Dispute. If the Owners agree not to rebuild, repair or restore the Building, the rights of the Owners to receive available insurance proceeds, if any, shall be subject to the rights of the Mortgagees with respect to the applicable Owner's share of any such available insurance proceeds. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Section 9.4, Section 9.5, Section 9.6 and Section 9.9 are applicable except that demolition, and not construction, shall be performed. For purposes of this Section 9.8, insurance proceeds include amounts contributed by a self-insured Owner.

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

9.10 **Common Ceilings, Floors, Walls and Doors.** The vertical boundaries between the Retail Parcel and the Office Parcel have generally been established based on measurement to the inside or outside surface of walls separating the Retail Parcel and the Office Parcel existing on the date of this Declaration. Horizontal boundaries are generally shown on the Survey based on measurement from the top of the floor slab of one level to the top of the floor slab of the next level existing on the date of this Declaration. Any raised flooring, its supports, and the space between the floor slab and the raised flooring is entirely in the Parcel owned by the Owner in whose Parcel the raised floors are located. Notwithstanding the foregoing, the obligations of Retail Owner under Section 9.1 and Office Owner under Section 9.2 shall be deemed to include an obligation to the center of common floor slabs and to the center of common walls (including doors), regardless of the exact location of the boundary; provided, however, the Owners shall coordinate work with respect to common floor slabs and common walls and doors and share equally their cost, except that improvements or repairs and maintenance benefiting only one Owner shall be performed by and shall be at such Owner's sole cost.

9.11 **Sewer Covenant.** Declarant does hereby covenant and agree, for itself, its successors and assigns, that the maintenance and repair of the common sewer lines located anywhere on the Property from the point of connection to the sewer main in the public street shall be the responsibility of Office Owner and Retail Owner (with cost responsibility allocated as set forth in Exhibit 5.1(B)) and shall not be the responsibility of the City. It is further granted that the City, its water management department, water section, shall have full right and authority to access all service valves and water meters wheresoever located on the Property. The undersigned further states that this covenant shall run with the land and shall be binding upon all subsequent grantees.

ARTICLE 10
LIENS, DEBTS, INTEREST AND REMEDIES

10.1 **Failure to Perform.** If, at any time, an Owner fails within fifteen (15) days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration or any other time period expressly provided for such payment to be made (thereby becoming a Defaulting Owner) then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (A) a lien against the Retail Property or Office Property, as applicable, owned by the Defaulting Owner and (B) for a default under ARTICLE 9 a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Retail Property or Office Property, as applicable, or otherwise under insurance policies carried pursuant to ARTICLE 8

hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this ARTICLE 10. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a Mortgage of real property in the State of Illinois. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("**Default Amount**") shall have been paid in full. A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Retail Property or Office Property owned by the Defaulting Owner, except a Prior Lien. A "**Prior Lien**" means a Mortgage which has been recorded against the Retail Property or Office Property, as applicable, provided, if either the Retail Property or Office Property has more than one (1) Mortgage recorded against it, only the first Mortgage recorded shall be deemed a Prior Lien unless otherwise agreed among any Mortgagees.

10.2 **No Diminution of Lien**.

(A) No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this ARTICLE 10) shall in any way affect or diminish any lien arising pursuant to this ARTICLE 10, and any lien which would have arisen against any property pursuant to this ARTICLE 10 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this ARTICLE 10) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

(B) If, at any time, an Owner as a Creditor Owner has recorded a notice of lien under Section 10.1 of this Declaration against any other Owner's portion of the Property, which lien has not been foreclosed, released, or satisfied in full, and if such portion of the Property or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such portion of the Property or part or interest the lesser of (i) an amount sufficient to satisfy that portion of the unpaid Default Amount and (ii) the entire proceeds from the sale, minus any amount paid to satisfy the Prior Lien. Following any such sale to the extent not paid in full on a sale, the Creditor Owner shall continue to have (a) a lien on the Defaulting Owner's portion of the Property and (b) the rights with respect to the proceeds of any subsequent sales of such Defaulting Owner's portion of the Property, as provided in this ARTICLE 10, to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Defaulting Owner's portion of the Property. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under ARTICLE 11, then the proceeds which a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depositary or other escrowee acceptable to the Creditor Owner and held for disbursement at the joint order of the applicable Owners or as directed by court order or by the arbitrator in such arbitration.

10.3 **Mortgagee's Subrogation.** A Mortgagee of all or any portion of the Retail Property or the Office Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this ARTICLE 10 affecting the property secured by its Mortgage upon payment of the amount secured by such lien.

10.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by JPMorgan Chase Bank at Chicago, Illinois or any

successor thereto as its base or prime or reference rate of interest, or if a base or prime or reference rate is not announced or available, then interest shall accrue at the annual rate of five percent (5%).

10.5 **Cumulative Remedies.** The rights and remedies of an Owner provided for in this ARTICLE 10 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. An Owner may enforce, by a proceeding in equity for mandatory injunction, the other Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or at law and equity; provided, however, no Owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from the other Owner as a result of any breach by the other Owner of its obligations under this Declaration.

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

10.7 **Period of Limitation.** 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.

10.8 **Attorneys' Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.

10.9 **Self-Help.** Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Declaration which grants an Owner the right to perform an obligation which the other Owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Declaration for non-performance of an obligation, such provision shall control the provisions of this Section 10.9.

ARTICLE 11
ARBITRATION

11.1 **Disputes Subject to Arbitration; Arbitration Procedure.** All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration:

(A) constituting a monetary claim involving an amount as to any one claim not exceeding $250,000 (in 2015 Equivalent Dollars); or

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

(C) involving any of the following matters:

(i) selection of an insurance company or apportionment of insurance premiums under Section 8.1 and Section 8.2 hereof;

(ii) appointment of a contractor or contractors pursuant to Section 9.4 or Section 13.4 hereof:

(iii) replacement of the Architect pursuant to Section 18.1 hereof;

(iv) other failure to agree on a matter described in Section 11.2, Section 16.1, Section 18.1 or Section 18.4 which this Declaration expressly requires the Owners to jointly decide or agree upon;

(v) disputes arising generally under ARTICLE 5, ARTICLE 8, ARTICLE 9 or ARTICLE 13; or

(vi) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to Arbitration,

which (with respect to any of such matters) shall not be resolved within sixty (60) days after it shall arise (or such other shorter or longer time period expressly provided herein), shall be submitted for arbitration to one (1) arbitrator at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules for expedited arbitration. Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within thirty (30) days, and proceedings shall commence within thirty (30) days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under clauses (C)(i), (ii) or (iii) above, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrator shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners. In the case of any other matter which the parties fail to agree upon which this Declaration expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrator shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of the issue and the provisions of this Declaration, if any, which require the arbitrator to make a particular finding. Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Declaration expressly governing the subject of the dispute, except in those instances where the arbitrator is required to select an individual, company or entity from those selected by the Owners and none meets such standards, terms or conditions. Such arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the Mortgagees of the filing of a claim and demand in arbitration within five (5) days thereafter. Owners may not seek injunctive relief in the arbitration. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners; provided, however, the arbitrator may include in its award any of the fees and costs of arbitration. Any award of the arbitrator shall be final and binding upon the Owners, and judgment thereon shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 10.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes which are not incidental to the Arbitrable Dispute and not easily divisible from it, the dispute shall be submitted to arbitration.

11.2 **Monetary Adjustment (Equivalent Dollars).** For purposes of this Declaration, "**2015 Equivalent Dollars**" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2015. The 2015 Equivalent Dollars of any amount shall be determined on January 1 of the fifth (5^{th}) full calendar year following the Effective Date, and, thereafter, at five (5)-year intervals, by multiplying said amount by one (1) plus a fraction (expressed as a percentage) (but not less than zero), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 2015 from (y), the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 2015. As used herein, the term "**Consumer Price Index**" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

ARTICLE 12
UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, flood, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in downtown Chicago, war or national defense preemptions, acts of God, energy or other Utility shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in downtown Chicago (or under any contract for other utilities between any Owner and any Utility provider) (other than inability to make payment of money) ("**Unavoidable Delay**") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereinafter in this ARTICLE 12, the "**Non-Performing Owner**") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay promptly after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any of the other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay. If non-performance is due to an Unavoidable Delay affecting the Non-Performing Owner which does not affect the other Owner's self-help remedy provided for elsewhere in this Declaration and which is otherwise exercisable for such non-performance, then notwithstanding such Unavoidable Delay, the other Owner shall still be entitled to the self-help remedy exercisable only under reasonable circumstances with respect to those obligations to have been performed by the Non-Performing Owner which are the subject of Unavoidable Delay.

ARTICLE 13
CONDEMNATION

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

13.2 **Payment of Award to Depositary; Temporary Taking Awards.** All Awards resulting from the taking of all or any part of the Retail Property or the Office Property, other than damages

resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depositary by the Owners, regardless of the Owner who received the Award, except as otherwise provided in Section 13.3, and the Depositary shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space not including Retail Easement Facilities or Office Easement Facilities or affecting services described in Section 5.1 or Section 5.2 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property.

13.3 **Taking of Only One Parcel.** In the event of (A) a taking (other than a temporary taking) of a part of the Retail Property or Retail Owned Facilities only (not including any Office Easement Facilities or Office Owned Facilities) or (B) a taking (other than a temporary taking) of a part of the Office Property or Office Owned Facilities only (not including any Retail Easement Facilities or Retail Owned Facilities), then, subject to the provisions of Section 13.6 hereof, the Owner of the portion of the Retail Property or Office Property, as applicable, or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Retail Property or Office Property, as applicable, or the Owned Facilities to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of the other Owner essential to the other Owner's operations or the services to be furnished the other Owner under ARTICLE 5. 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 Retail Property or Office Property, as applicable, or Owned Facilities 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 17 hereof and to retain any excess not required for such repair and restoration; provided, however, the right of any particular Owner to receive a portion of such excess, if any, shall be subject to the provisions of Section 20.11 and to Mortgages encumbering such Property. If the cost of repair or restoration is estimated to be less than $250,000 (in 2015 Equivalent Dollars), then the Award need not be paid to the Depositary. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration which adversely and materially affects an Easement essential to the other Owner's operations in favor of the other Owner or the services to be furnished the other Owner under ARTICLE 5 hereof, then: (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then a 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 (other than an Emergency Situation involving solely an economic loss) a 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 17 hereof, be entitled to withdraw any Award and any other monies held by the Depositary as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies. Repair and restoration under this Section 13.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owner's consent if it would not otherwise be required under ARTICLE 14.

13.4 **Repair and Restoration by All Owners.** In the event of a taking other than (A) a temporary taking described in Section 13.2 hereof, (B) a taking described in Section 13.3 hereof, or (C) a taking of all or substantially all of the Building, or all of the Parcels, then, subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) approved by the Owners. 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 contractor or contractors 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 constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in the Retail Portion, then the approval of Office Owner shall not be required with respect to the plans and specifications therefor which do not constitute Alterations requiring consent of the other Owner under ARTICLE 14, nor shall the consent of Office Owner be required with respect to the selection of a contractor. In such event, however, Retail Owner shall consult with Office Owner regarding those matters. If such repair and restoration is to be performed solely in the Office Portion, then the approval of Retail Owner shall not be required with respect to plans and specifications therefor which do not constitute Alterations requiring consent of the other Owner under ARTICLE 14, nor shall the consent of Retail Owner be required with respect to the selection of a contractor. In such event, however, Office Owner shall consult with Retail Owner regarding those matters. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree. 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 Easement or covenant under this Declaration is extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under ARTICLE 2 and ARTICLE 3 hereof and for the furnishing of services under ARTICLE 5 hereof. The Architect will furnish to each of the Owners (but only if and to the extent such Owner's approval is required) a set of 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 or Owners in whose portion of the Parcel such repair and restoration is being performed, as such repair and restoration proceeds, to disburse, in accordance with ARTICLE 17 hereof, any Award paid to the Depositary for application to the cost and expense of such repair and restoration.

13.5 **Excess Award.** The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6 hereof). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's portion of the Property) bears to the apportionment of the Award to the other Owner or Owners (as the case may be) (including parties with an interest in the other Owner or Owners' portion of the Property); provided, however, the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 20.11. If there is no apportionment in any judicial or administrative proceeding, the Owner shall petition for such apportionment, if possible. Otherwise, the Owner shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

13.6 **Demolition.** If, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), any of the Owners reasonably determines that its portion of the Building can no longer be repaired or restored or operated on an economically feasible basis, then such Owner shall notify the other Owner of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Building as may be required by Section 13.3 and Section 13.4 hereof. However, such Owner not repairing or restoring shall not demolish, and shall repair or restore its portion of the Building to the extent, if any, as may be necessary, to provide essential services set forth in this Declaration, Easements essential to the operations of the other Owner or

structural support for the other portion of the Building. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 13.4 hereof are applicable.

13.7 **Allocation of Award.** In the event of a taking of all or substantially all of the Retail Property or the Office Property, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners, subject to the rights of their respective Mortgagees, in accordance with said apportionment; provided, however, the right of an Owner to receive its share of any award and payment shall be subject to the provisions of Section 20.11.

ARTICLE 14
ALTERATIONS

14.1 **Permitted Alterations**.

(A) An Owner (hereinafter in this ARTICLE 14, "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this ARTICLE 14, "**Alterations**") to the part of the Building within such Altering Owner's portion of the Property, provided that such Alterations comply with all of the provisions of this ARTICLE 14. Alterations shall also include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this ARTICLE 14. Replacement of Facilities may be made by an Altering Owner without consent of the other Owner, subject to the provisions of Section 5.9. The provisions of this ARTICLE 14 governing Alterations do not negate or diminish other provisions of this Declaration having to do with additions, improvements or alterations expressly required or permitted in ARTICLE 4, ARTICLE 5, ARTICLE 6, ARTICLE 9 and ARTICLE 13 hereof, which are governed by such provisions only and not this ARTICLE 14 unless also designated in such Articles as "**Alterations**" to be governed by this ARTICLE 14.

(B) Alterations shall not be made without the prior written consent of the other Owner (unless otherwise expressly permitted by this Declaration), if such Alterations will:

(i) during their performance or upon their completion, unreasonably diminish the benefits afforded to such other Owner by an Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;

(ii) during their performance or upon their completion, unreasonably degrade or diminish services to the other Owner under ARTICLE 5;

(iii) materially increase the costs or expenses for which such other Owner is or would be responsible pursuant to ARTICLE 5 hereof;

(iv) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into or otherwise affecting any Structural Supports in violation of ARTICLE 4;

(v) consist of or result in discharge, release, emission, deposit, treatment, transport, production, incorporation, disposal, leakage, transfer or escape of Hazardous Material, in a manner which fails to comply with any applicable Law if the other Owner could be adversely affected by such Alterations;

(vi) change landmark status to the extent such status has been granted; or

(vii) result in a material change in appearance to the Façade.

(C) If at any time the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of any other Owner) the consent of the other Owner or in connection with the Alterations described in Section 14.1(E) below, then, before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to the other Owner a copy of the plans and specifications (and, if any Structural Supports will be affected, an engineering report describing the effect on such Structural Supports) showing the proposed Alterations and a reference to this Section 14.1. An Altering Owner may also at any time request confirmation from the other Owner that its consent is not required with respect to proposed Alterations, if such Alterations do not require its consent, and such confirmation shall be given within thirty (30) days after the request is made. Failure to respond during such thirty (30)-day period shall be deemed confirmation that no consent is required. If such other Owner consents to such Alterations or, in any case where consent is required, does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within thirty (30) days (as hereinafter extended) after receipt of plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. Within the thirty (30)-day response period, the other Owner may request (i) additional information with respect to the proposed Alterations, in which case the other Owner will be granted an additional fourteen (14) days to respond from the date the other Owner receives such additional information or (ii) an extension of the time to respond, which extension of time shall not exceed fourteen (14) days from such thirty (30)-day response period. The Owner whose consent is requested will not unreasonably delay its response, having in mind the scope and complexity of the proposed Alterations. If, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of Section 14.1(A) or Section 14.1(B), then such Owner (the "**Objecting Party**") believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 14.1(A) or Section 14.1(B) hereof, and shall specify in detail the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 14.1(A) or Section 14.1(B), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to the rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) In making Alterations, Retail Owner and Office Owner shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, including, without limitation, the City 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 and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would disturb an Occupant or Occupants of the other portion of the Building, but, provided such Owner has undertaken such minimization efforts, such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable

disturbances. An Altering Owner may perform work during any hours permitted by applicable Law.

(E) Notwithstanding anything to the contrary contained in this Declaration, at its sole cost and expense after all tenants of Retail Owner as of the Effective Date have vacated the Basement and, upon notice to Office Owner, Retail Owner shall promptly install a permanent floor to close the stairwell that currently exists from the First Floor West Retail to the Basement and construct and install any support that is necessary in the Basement to allow a floor to be constructed in the First Floor West Retail space. Retail Owner shall have no obligation to finish and condition or improve such space in the Basement. Retail Owner shall also have the right to construct and install additional doors leading from the First Floor East Retail and the First Floor West Retail to the Lobby and Services Areas in the approximate locations shown on the Easement Exhibit or as otherwise agreed to by Office Owner.

14.2 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City or other government agency having jurisdiction thereof requires joinder of the other Owner. An Altering Owner shall send copies of any building permits to the other Owner at such other Owner's written request. If joinder by such 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 at the requesting Owner's expense; provided, however, the Altering Owner shall indemnify, and hold harmless such other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of such other Owner's execution of the application, permit or other instrument. If an Owner fails to execute said application or instruments when required hereunder to do so, and there is no dispute between the Owners concerning the affected Alterations, the Altering Owner is hereby irrevocably appointed attorney–in–fact of the other Owner (such power of attorney being coupled with an interest and hence, irrevocable) to execute said application or instruments on behalf of such other Owner.

14.3 **No Liens.** An Owner performing any work required or provided for under this Declaration shall use reasonable efforts to include in any construction contract a provision pursuant to which the contractor (A) recognizes the separate ownership of the Retail Property and the Office Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Lien Act set forth in 770 ILCS 60/0.01 et seq. (said Act and any successors thereto, the "**Mechanics' Lien Act**") shall only be enforceable against the portion of the Property owned by the Altering Owner, or (B) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

ARTICLE 15
ESTOPPEL CERTIFICATES

15.1 **Estoppel Certificates.** Each Owner shall, from time to time, within thirty (30) days after written request from any other Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 20.11(B) hereof, execute, acknowledge and deliver to the requesting party, 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 such modifications;

(B) Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Declaration (or grounds therefor after giving the requisite notice hereunder or by expiration of any required time period) by the requesting Owner and, if so, specifying the nature and extent thereof;

(C) Whether there are any sums (other than payments for Operating Expenses owed under Exhibit 5.5 which in the aggregate are less than $50,000 (in 2015 Equivalent Dollars) and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amounts thereof;

(D) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to ARTICLE 5 hereof the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof but has not yet charged to such requesting Owner, and if there is any such work, specifying the nature and extent thereof and the projected amount to be paid by the requesting Owner;

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

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

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

(H) The nature of any arbitration proceeding or finding under ARTICLE 11 made within the ninety (90) days preceding the date of such Estoppel Certificate;

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

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

ARTICLE 16
DEPOSITARY

16.1 **Appointment of Depositary.** A depositary (the "**Depositary**") shall be appointed, at or before such time as the duties of Depositary are to be performed, in the manner hereinafter provided to receive 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 shall be appointed by the Owners jointly. The initial Depositary shall be Chicago Title and Trust Company, 10 South LaSalle Street, Chicago, Illinois 60606. Any other Depositary selected by the Owners shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with offices in Chicago, Illinois or other bank or trust company agreed to by the Owners in writing. Either Owner may at any time

propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) business days after receipt of the proposal by such Owner, the disagreement shall become an Arbitrable Dispute. The Depositary shall be entitled to receive from each of the Owners the Depositary's reasonable fees and expenses as follows: (A) eighty-five percent (85%) from Office Owner and fifteen percent (15%) from Retail Owner; and (B) in the event Office Owner has acquired the Second Floor East Retail, ninety percent (90%) from Office Owner and ten percent (10%) from Retail Owner. Any Owner may propose to the other Owner how such fee shall be shared, and if the Owners fail to agree on a cost sharing arrangement within thirty (30) days after receipt of an Owner's proposal, such disagreement shall become an Arbitrable Dispute. Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment in substantially the form attached hereto as Exhibit 16.1 and made part hereof.

16.2 **Liability of Depositary.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence 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 an express written authorization from the Owners; provided that if only one Owner is entitled to said insurance proceeds or condemnation Award or Awards, then said Owner may authorize the Depositary to so proceed. In addition, the Depositary may rely conclusively on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

16.3 **Interest on Deposited Funds.** The Depositary shall have no obligation to pay interest on any monies held by it, unless the Depositary shall have given an express written undertaking to do so, or unless 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 said Owners, then the Depositary, within thirty (30) days after request from an Owner given to the Depositary and to the other Owner, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within ninety (90) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary. Unless the Depositary shall have undertaken to pay interest thereon, monies received by the Depositary pursuant to any of the provisions of this Declaration shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

16.4 **Indemnification of Depositary.** In consideration of the services rendered by Depositary, the Owners jointly and severally hereby agree to indemnify and hold harmless the Depositary from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depositary's duties hereunder or in the defense of any claim or claims made against Depositary by reason of its appointment hereunder, except where due to the negligence or willful misconduct of the Depositary or actions not taken in good faith by the Depositary. Where the Depositary is only disbursing funds for one Owner, and the other Owner are not

involved in the deposit or overseeing of disbursement of funds, such other Owner shall not be obligated to indemnify and hold harmless the Depositary in connection with such duties of the Depositary.

16.5 **Resignation of Depositary.** The Depositary may resign by serving not less than thirty (30) days' prior written notice on all of the Owners and Mortgagees. Within fourteen (14) days after receipt of such notice, the Owners jointly shall, in the manner set forth in Section 16.1, appoint a substitute who qualifies under Section 16.1 hereof (if there are duties to be performed at such time by a Depositary or funds are held by the resigning Depositary), and the Depositary shall prepare a final accounting of all funds received, held and disbursed by it and shall transfer all funds, together with copies of all records, held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, and there are funds held by the resigning Depositary, the Depositary may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, which qualifies under Section 16.1 hereof.

ARTICLE 17
DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 **Disbursement Requests.**

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

(i) That the sum requested has either (a) been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of more than one (1) Owner (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished 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 the amount of any retentions, and shall state the process of the work up to the date of said certificate and any other information required by the Mechanics' Lien Act and any title insurer affording coverage against mechanics' liens;

(ii) That the sum requested, plus all sums previously disbursed, less retentions, 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;

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

(iv) Other information which may from time to time be required by the Mortgagees which is customarily required by Mortgagees of comparable mixed use buildings, or as may be agreed to by the Owners.

(B) Upon:

(i) compliance with the provisions of Section 17.1(A), and

(ii) receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Lien Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by the title insurer affording coverage against mechanics' liens from the persons named in the sworn statement, and

(iii) approval by the title insurer, the Owners of the lien waivers and other documentation, and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners) insuring over possible mechanics' lien claims relating to work in place and the continued priority of the liens in favor of the Owners, the Depositary 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 Owner or the Depositary may require that disbursements be made through the customary form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this 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 this Section 17.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.2 **No Lien or Consent by Contractor.** No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owners, shall have any interest in or right to or lien upon any funds held by the Depositary. The Owners may jointly at any time provide in writing 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 18
ARCHITECT

18.1 **Appointment of Architect.** When and if required by the provisions of this Declaration, the Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "**Architect**"). The Architect shall, upon its appointment, execute an agreement with the Owners in the form required by the Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then serving Architect to be replaced without cause upon thirty (30) days' prior written notice. The Owners jointly may replace the Architect for any reason. An Owner also may cause any Architect to be replaced, and the other Owner shall be deemed to have consented to such replacement, if it demonstrates to the other Owner that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently. If the Owners do not jointly desire to replace the Architect, then 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 fairly, diligently or competently. If, in the opinion of the Owners receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 18.1, the Owner receiving such notice and objecting to the appointment of a new Architect shall notify the requesting Owner of its objection in writing within thirty (30) days after receipt of such notice from the requesting Owner. If, within thirty (30) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, or if the Owners fail to agree on the replacement of the Architect, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than sixty (60) days' prior written notice to the Owners.

18.2 **Notice of Submission of Dispute to Architect.** In any instance when the Architect serving pursuant to Section 18.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, an Owner 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, 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 or willful misconduct. No advice given by the Architect under this Declaration shall be binding on the Owners and an Owner may accept or reject such advice.

18.3 **Replacement of Architect.** If any new Architect is appointed 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, 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 such preparation of plans and specifications or supervision of any such work.

18.4 **Architect's Fees.** 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 each Owner involved in the work shall pay its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this 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 such repair, restoration or demolition as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If not otherwise provided in this Declaration, the Owners shall agree on the equitable share owed by each Owner. If an Owner shall fail to pay its allocable share of any fees or expenses of the Architect within thirty (30) days after receipt of any invoice therefor from the Architect, then the other Owner may pay the same and the Owner failing to pay shall, within thirty (30) days after written demand for reimbursement, reimburse the other Owner for any such payment.

ARTICLE 19
NOTICES AND APPROVALS

19.1 **Notice to Parties.** Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "**notice**") that an Owner is required, permitted or desires to give or make or communicate to any other Owner shall be in writing and shall be deemed to have been given (A) if and when personally delivered (including messenger service), or (B) on the first business day after being deposited with a commercially recognized national overnight delivery service, and addressed to a party at its address set forth below or to such other address the Owner to receive such notice may have designated to the other Owner by notice in accordance herewith:

If to Retail Owner: 105 Madison OPCO, LLC
1156 West Armitage Avenue
Chicago, Illinois 60614
Attention: Warren Baker

With a copy to: Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
Attention: Jeffrey P. Gray

If to Office Owner: Windy City RE LLC
737 North Michigan Avenue,
Suite 1230
Chicago, Illinois 60611
Attention: Amy M. Rubenstein, Principal

With a copy to: Levenfeld Pearlstein LLC
Two North LaSalle Street
Suite 1300
Chicago, Illinois 60602
Attention: Howard S. Dakoff, Esq.

and to any Mortgagee which has complied with the notice provisions of Section 20.11 hereof.

An Owner may designate a different address from time to time, provided however it has given at least thirty (30) days' advance notice of such change of address. Failure to give notices to an Owner's or Mortgagee's counsel whom such Owner or Mortgagee has requested that copies be delivered to shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "**Owner**" of its respective portion of the Building, and the succeeding Owner of that portion of the Building shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "**Owner of Record**" at the street address for that Owner's portion of the Building, as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City department or agency having jurisdiction over City addresses, or (iii) to the grantee at the address shown in that last recorded conveyance of the portion of the Building in question.

19.2 **Multiple Owners.** If at any time the interest or estate of Retail Owner or Office Owner shall be owned by more than one Person (hereinafter collectively referred to as "**multiple owners**"), the

multiple owners shall give to the other Owner a written notice, executed and acknowledged by all of the multiple owners, in form proper for recording, which shall (A) designate one Person, having an address in the State of Illinois to whom shall be given, as agent for all of the multiple owners, all notices thereafter given to the multiple owners, and (B) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written notice given by all of their multiple owners of their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this ARTICLE 19, collectively referred to as "**legal process**"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple owners as agent for all of the multiple owners and such notice or legal process shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple owners shall be deemed to have appointed each of the other multiple owners as agent for the receipt of notices and the service of legal process as stated above. Notwithstanding anything to the contrary contained above, as long as Declarant owns any portion of the Retail Parcel, it alone will be deemed the Retail Owner for the purpose of all decisions to be made by the Retail Owner

ARTICLE 20
GENERAL

20.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Building and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate or interest in the Building. 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 an Owner may reasonably deem confidential or privileged or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as the other Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder.

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

20.3 **Headings.** The headings of Articles and Sections 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 or Sections.

20.4 **Amendments to Declaration.** Except as otherwise provided in Section 20.15, this Declaration may be amended or terminated only by an instrument signed by the then Retail Owner and the then Office Owner and consented to by the Mortgagees. Any amendment to or termination of this Declaration shall be recorded with the Recorder. So long as any portion of the Property is submitted to

the Act, the Condominium Association for such portion shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners (as the successor to Retail Owner or Office Owner, as the case may be), which amendments or termination shall be binding on all Unit Owners (as the successor to Office Owner or Retail Owner, the case may be).

20.5 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for the term of this Declaration, which shall be perpetual to coincide with the perpetual Easements provided for under this Declaration (or if the Law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If the Law prescribes such shorter period, then upon expiration of such shorter period, 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 twenty (20) years, subject to amendment or termination as set forth in Section 20.4. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (A) the rule against perpetuities or some analogous statutory provisions, (B) the rule restricting restraints on alienation, or (C) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Mayor Rahm Emanuel, Mayor of the City of Chicago, Illinois.

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

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

20.8 **Name of Building.** The Building shall be known as "105 West Madison Street". However, Office Owner shall have the right to change the name of the Building from time to time, subject to any City restrictions which may be in place, such as landmark designation restrictions. If Office Owner changes the name of the Building, Office Owner shall replace Building signage at Office Owner's sole expense to reflect the new name. Nothing contained in this Section 20.8 shall be construed to prohibit any retail tenant from displaying individual identification signage in accordance with, and subject to, Section 6.5(A) (including, without limitation, store and company names) or to prohibit identification signage by office tenants near or in the Lobby (including, without limitation, bronze tablet tenant identification signage) in accordance with all other applicable requirements.

20.9 **No Third-Party Beneficiary.** This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity (including, without limitation, the Depositary or the Architect), as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

20.10 **Incorporation.** 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.

20.11 **Notice to Mortgagees; Rights of Mortgagee**.

(A) The term "**Mortgage**", as used herein, shall mean any Mortgage (or any trust deed) of an interest in the Property given primarily to secure the repayment of money owed by the mortgagor. The term "**Mortgagee**", as used herein, shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed).

(B) If a Mortgagee shall have served on the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee. The address of any existing Mortgagee shall be as set forth in its consent to subordination attached hereto. After receipt of such notice from a Mortgagee, no notice thereafter given by either party shall be deemed to have been given unless and until a copy thereof shall have been so given to the Mortgagee. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

(i) If, and to the extent that, the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner or to the Depositary to be disbursed by the Depositary, in accordance with the provisions of this Declaration, exceeds the cost of repair and restoration, then such proceeds of any claim under an insurance policy or condemnation Award shall be paid to the applicable Mortgagee to the extent provided under the applicable Mortgage.

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

(iii) Except as otherwise provided in Section 20.15, no termination or amendment or modification of this Declaration shall be effective without the prior written consent of each Mortgagee, which consent shall not be unreasonably withheld.

(iv) No Owner may elect to restore or not restore a portion of the Property pursuant to ARTICLE 9 or ARTICLE 14 without first obtaining the prior written consent of its Mortgagee, if any; provided, that to the extent that an Owner is required to restore its Property pursuant to ARTICLE 9 or ARTICLE 14, then the consent of any such Mortgagee shall not be required with respect to such restoration.

(C) A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Declaration by the Owner whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach to such mortgagor Owner, plus the Mortgagee shall: (i) have a period of fourteen (14) days more than given to the Owner whose property is secured by the Mortgagee's Mortgage in each instance in the case of a monetary default and thirty (30) days more than given to such Owner in each instance in the case of any other default, for remedying the default or causing the same to be remedied, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such default or cause the same to be remedied. In addition, the other Owner agrees not to exercise any right or remedy to which it may be entitled as a Creditor Owner, except exercise of a self-help right in an

Emergency Situation, while the Mortgagee cure rights are available in accordance with this subsection.

(D) Should any prospective Mortgagee require a modification or modifications of this Declaration, which modification or modifications will not cause an increased cost or expense to the Owner whose property is not subject to the Mortgage of such Mortgagee or in any other way materially and adversely change the rights and obligations of such Owner, then and in such event, such Owner agrees that this Declaration may be so modified and agrees to execute whatever documents are reasonably required therefor and deliver the same to the other Owner within ten (10) business days following written requests therefor by the other Owner or prospective Mortgagee.

(E) The parties hereby acknowledge and agree that the Mortgagee or Mortgagees who have executed the Consent of Mortgagee instrument attached hereto have done so to make the Mortgages and the terms and provisions of the Mortgages and any loan documents secured by the Mortgages now held by such Mortgagees encumbering the Property subordinate to this Declaration.

20.12 **Coordination with Tenants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall coordinate all requests and contacts between tenants of its portion of the Building and the other Owner relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render such other Owner liable either to such tenants or to the Owner for acts of such tenants or such other Owner.

20.13 **Waiver of Mechanic's Liens by Owners.** The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of or right to liens which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to, the Property or improvements owned by the other Owner or any part thereof or with respect to the estate or interest of any person whatsoever in the Property or improvements owned by the other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery, furnished or to be furnished thereto pursuant to this Declaration, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or subsubcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to ARTICLE 4 or ARTICLE 5 of this Declaration. The parties agree that, to the extent permitted by Law, the legal effect of this Declaration is that no mechanic's lien or claim may be filed or maintained by an Owner under the Illinois Mechanic's Lien Act with respect to that portion of the Property or improvements owned by the other Owner, except as set forth above with regard to ARTICLE 4 and ARTICLE 5 of this Declaration. The provisions of this Section 20.13 are not intended to waive any lien created under ARTICLE 10.

20.14 **Binding Effect.** Except as otherwise provided herein, the Easements, covenants and restrictions created under this Declaration shall be irrevocable and perpetual in nature, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

20.15 **Special Amendment.** Office Owner reserves, for itself and its successors and assigns, the right and power to record a special amendment ("**Special Amendment**") to this Declaration at any time and from time to time which only amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved,

and granted to Office Owner a to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, Mortgage, other evidence of obligation, or other instrument affecting any portion of the Property, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of and a consent to the reservation of, the power to Declarant and its successors and assigns to vote in favor of, make, execute and record Special Amendments.

20.16 **Condominium Association Acting for Unit Owners**.

(A) Upon submission of any portion, but less than all, of the Office Parcel to the Act, all rights, approvals, easements and benefits under this Declaration or appurtenant to such portion shall be exercised, to the extent of such portion submitted to the Act, by Office Owner on behalf of any Condominium Association and all Unit Owners, except for Easements which by their nature are exercisable only by Unit Owners individually.

(B) Upon submission of any portion, but less than all, of the Retail Parcel to the Act, all rights, approvals, Easements and benefits under this Declaration or appurtenant to such portion shall be exercised, to the extent of such portion submitted to the Act, by Retail Owner, on behalf of any Condominium Association and all Unit Owners, except for easements which by their nature are exercisable only by Unit Owners individually.

(C) Following submission of all of a Parcel to the Act, any action to enforce rights, approvals, obligations, easements, burdens and benefits under this Declaration on behalf of Unit Owners or a Condominium Association shall be taken on behalf of all Unit Owners and the Condominium Association for such Parcel by the respective Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium Association.

(D) All obligations of an Owner under this Declaration shall be the obligations jointly and severally of the Condominium Association and the Unit Owners, collectively with respect to any portion of the Property as has been submitted and remains subject to the Act; provided, however, no individual Unit Owner (or the holder of any mortgage on such owner's Unit) shall be liable for any obligation of an Owner in excess of a percentage of such liability equal to the percentage interest in the common elements in the respective Property attributable to such Unit as shown in the Condominium Declaration. In any case, such liability of a Unit Owner shall be subject to the provisions of ARTICLE 21 hereof. Upon payment of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Unit on account of such claim shall be deemed released against such Unit Owner's Unit without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner and at the expense of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit. When a Unit is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit shall be joint and several.

(E) Notices under ARTICLE 19 to a Unit Owner or Unit Owners shall be effective if given either to the Condominium Association or to Unit Owners, and notices from a Unit Owner or Unit Owners shall be given by the Condominium Association.

20.17 **Negation of Partnership**. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another

party, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

20.18 **Not a Public Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third–party Person, nor shall any third–party Person be deemed to be a beneficiary of any of the provisions contained herein.

20.19 **Declaration Shall Continue Notwithstanding Breach**. It is expressly agreed that, except as herein specifically provided, no breach of this Declaration shall (A) entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, or (B) defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value as to any part of the Property. However, such limitation shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of any such breach.

20.20 **Counterparts**. This Declaration and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document.

ARTICLE 21
LIMITATION OF LIABILITY

21.1 **Limitation of Liability.** The liability under this Declaration of an Owner or Mortgagee shall be limited to and enforceable solely against the assets of such Owner or Mortgagee constituting an interest in the Property or Owned Facilities (including insurance and condemnation proceeds attributable to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and any security, such as a letter of credit or bond provided pursuant to this Declaration, and no other assets of such Owner or Mortgagee. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and the negative capital account of a partner in a partnership, or a member in a limited liability company, which is an Owner and an obligation of a partner to contribute capital to the partnership, or a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability, shall be asserted or be enforceable against it or any of the beneficiaries under said trust Declaration by reason of any of the covenants or conditions contained herein.

21.2 **Transfer of Ownership**. If an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such Owner), then (A) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Declaration which accrue under this Declaration from and after the date such Owner sells, assigns, transfers, conveys or otherwise disposes of its interest in such portion of the Property, and (B) the Person who succeeds to such Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Declaration of such Owner both theretofore accruing or which accrue under this Declaration from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property.

ARTICLE 22
REASONABLENESS

Whenever this Declaration requires an approval, consent, determination, request, designation, selection or judgment by either Owner, unless another standard is expressly set forth, such approval, consent, determination, request, designation, selection or judgment and any conditions imposed thereby shall be reasonable and shall not be unreasonably withheld, conditioned or delayed. Any expenditure by a party permitted or required under this Declaration, for which such party demands reimbursement from the other party, shall be limited to the fair market value of the goods and services involved, shall be reasonably incurred, and shall be substantiated by documentary evidence available for inspection and review by the other party.

[SIGNATURE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and recorded the day and year first above written.

105 Madison OPCO, LLC

By: Baker Development Corporation, Manager

By: _____
Name: Warren H. Baker
Title: President

STATE OF ILLINOIS)
) **SS**
COUNTY OF COOK)

I, Carol Lynn Whittaker, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Warren H. Baker, the President of Baker Development Corporation, an Illinois corporation and the manager of 105 Madison OPCO, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation and company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of April, 2015.

Carol Lynn Whittaker
Notary Public

OFFICIAL SEAL
CAROL LYNN WHITTAKER
Notary Public - State of Illinois
My Commission Expires Jun 23, 2017

My commission expires 6/23/2017.

EXHIBIT 1.1(A)

LEGAL DESCRIPTIONS OF OFFICE PARCEL AND RETAIL PARCEL

Office Parcel

SURVEY PARCEL 1:

LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, AND LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 14.00 FEET ABOVE CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

SURVEY PARCEL 2:

LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 42.00 FEET ABOVE CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

SURVEY PARCEL 5:

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 14.00 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00°32'00" EAST ALONG THE EAST LINE OF SAID TRACT, 48.83 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°33'34" WEST, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 32.58 FEET; THENCE NORTH 00°26'26" WEST, 7.96 FEET; THENCE NORTH 45°26'26" WEST, 1.80 FEET; THENCE SOUTH 89°33'34" WEST, 10.07 FEET; THENCE NORTH 00°26'26" WEST, 3.00 FEET; THENCE SOUTH 89°33'34" WEST, 5.00 FEET; THENCE NORTH 00°26'26" WEST, 6.60 FEET; THENCE SOUTH 89°33'34" WEST, 6.15 FEET; THENCE NORTH 00°26'26" WEST, 30.00 FEET TO THE NORTH LINE OF SAID TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET; THENCE SOUTH 89°33'34" WEST ALONG SAID NORTH LINE AND THE SOUTH LINE OF WEST MADISON STREET, 16.00 FEET; THENCE SOUTH 00°26'26" EAST, 17.77 FEET; THENCE SOUTH 89°33'34" WEST, 17.40 FEET; THENCE SOUTH 00°26'26" EAST, 12.60 FEET; THENCE NORTH 89°33'34" EAST, 1.33 FEET; THENCE SOUTH 00°26'26" EAST, 6.20 FEET; THENCE SOUTH 89°33'34" WEST, 26.57 FEET; THENCE NORTH 00°26'26" WEST, 1.10 FEET; THENCE SOUTH 89°33'34" WEST, 3.87 FEET; THENCE NORTH 45°26'26" WEST, 2.47 FEET; THENCE SOUTH 89°33'34" WEST, 4.58 FEET; THENCE NORTH 00°26'26" WEST, 2.30 FEET; THENCE SOUTH 89°33'34"

WEST, 2.34 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00°31'11" EAST ALONG SAID WEST LINE OF TRACT 19.25 FEET TO THE SOUTH LINE THEREOF, BEING ALSO A LINE SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID TRACT; THENCE NORTH 89°33'34" EAST ALONG SAID SOUTH LINE, 126.23 FEET TO THE EAST LINE OF SAID TRACT; THENCE NORTH 00°32'00" WEST ALONG SAID EAST LINE 1.84 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

SURVEY PARCEL 6:

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 42.00 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 89°33'34" WEST ALONG SAID NORTH LINE OF TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET, 51.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°33'34" WEST ALONG SAID NORTH LINE OF TRACT AND THE SOUTH LINE OF WEST MADISON STREET, 74.82 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00°31'11" EAST ALONG SAID WEST LINE OF TRACT 39.10 FEET; THENCE NORTH 89°33'34" EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 26.22 FEET; THENCE SOUTH 00°26'26" EAST, 2.40 FEET; THENCE NORTH 89°33'34" EAST, 51.10 FEET; THENCE NORTH 00°26'26" WEST, 1.90 FEET; THENCE NORTH 89°33'34" EAST, 4.25 FEET; THENCE NORTH 00°26'26" WEST, 6.05 FEET; THENCE SOUTH 89°33'34" WEST, 3.60 FEET; THENCE NORTH 00°26'26" WEST, 10.00 FEET; THENCE SOUTH 89°33'34" WEST, 3.20 FEET; THENCE NORTH 00°26'26" WEST, 23.55 FEET TO THE NORTH LINE OF SAID TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET, AND THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

SURVEY PARCEL 8:

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 42.00 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00°32'00" EAST ALONG THE EAST LINE OF SAID TRACT, 48.83 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°33'34" WEST, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 32.58 FEET; THENCE NORTH 00°26'26" WEST, 9.24 FEET; THENCE SOUTH 89°33'34" WEST, 16.35 FEET; THENCE SOUTH 00°26'26" EAST, 1.90 FEET; THENCE SOUTH 89°33'34" WEST, 51.10 FEET; THENCE NORTH 00°26'26" WEST, 2.40 FEET; THENCE SOUTH 89°33'34" WEST, 26.22 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00°31'11" EAST ALONG SAID WEST LINE OF TRACT 11.57 FEET TO

THE SOUTH LINE THEREOF, BEING ALSO A LINE SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID TRACT; THENCE NORTH 89°33'34" EAST ALONG SAID SOUTH LINE, 126.23 FEET TO THE EAST LINE OF SAID TRACT; THENCE NORTH 00°32'00" WEST ALONG SAID EAST LINE 1.84 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Retail Parcel

First Floor East Retail

SURVEY PARCEL 4

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 14.00 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00°32'00" EAST ALONG THE EAST LINE OF SAID TRACT, 48.83 FEET; THENCE SOUTH 89°33'34" WEST, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 32.58 FEET; THENCE NORTH 00°26'26" WEST, 7.96 FEET; THENCE NORTH 45°26'26" WEST, 1.80 FEET; THENCE SOUTH 89°33'34" WEST, 10.07 FEET; THENCE NORTH 00°26'26" WEST, 3.00 FEET; THENCE SOUTH 89°33'34" WEST, 5.00 FEET; THENCE NORTH 00°26'26" WEST, 6.60 FEET; THENCE SOUTH 89°33'34" WEST, 6.15 FEET; THENCE NORTH 00°26'26" WEST, 30.00 FEET TO THE NORTH LINE OF SAID TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET; THENCE NORTH 89°33'34" EAST ALONG SAID NORTH LINE AND THE SOUTH LINE OF WEST MADISON STREET, 55.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

First Floor West Retail

SURVEY PARCEL 3 – FIRST FLOOR WEST RETAIL:

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 14.00 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 89°33'34" WEST ALONG SAID NORTH LINE OF TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET, 71.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°26'26" EAST, 17.77 FEET; THENCE SOUTH 89°33'34" WEST, 17.40 FEET; THENCE SOUTH 00°26'26" EAST, 12.60 FEET; THENCE NORTH 89°33'34" EAST, 1.33 FEET; THENCE SOUTH 00°26'26" EAST, 6.20 FEET; THENCE SOUTH 89°33'34" WEST, 26.57

FEET; THENCE NORTH 00°26'26" WEST, 1.10 FEET; THENCE SOUTH 89°33'34" WEST, 3.87 FEET; THENCE NORTH 45°26'26" WEST, 2.47 FEET; THENCE SOUTH 89°33'34" WEST, 4.58 FEET; THENCE NORTH 00°26'26" WEST, 2.30 FEET; THENCE SOUTH 89°33'34" WEST, 2.34 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH 00°31'11" WEST ALONG SAID WEST LINE OF TRACT 31.42 FEET TO THE NORTH LINE THEREOF, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET; THENCE NORTH 89°33'34" EAST ALONG SAID NORTH LINE OF TRACT AND THE SOUTH LINE OF WEST MADISON STREET, 55.22 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Second Floor East Retail

SURVEY PARCEL 7 – SECOND FLOOR EAST RETAIL

THAT PART OF LOTS 7, 8 AND 8 ½ IN ASSESSORS DIVISION OF BLOCK 118, ACCORDING TO THE PLAT THEREOF, RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 27.25 FEET ABOVE CHICAGO CITY DATUM, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF 42.00 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL LIMITS PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST MADISON STREET AND WEST LINE OF SOUTH CLARK STREET, BEING ALSO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00°32'00" EAST ALONG THE EAST LINE OF SAID TRACT, 48.83 FEET; THENCE SOUTH 89°33'34" WEST, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 32.58 FEET; THENCE NORTH 00°26'26" WEST, 9.24 FEET; THENCE SOUTH 89°33'34" WEST, 12.10 FEET; THENCE NORTH 00°26'26" WEST, 6.05 FEET; THENCE SOUTH 89°33'34" WEST, 3.60 FEET; THENCE NORTH 00°26'26" WEST, 10.00 FEET; THENCE SOUTH 89°33'34" WEST, 3.20 FEET; THENCE NORTH 00°26'26" WEST, 23.55 FEET TO THE NORTH LINE OF SAID TRACT, BEING ALSO THE SOUTH LINE OF WEST MADISON STREET; THENCE NORTH 89°33'34" EAST ALONG SAID NORTH LINE AND THE SOUTH LINE OF WEST MADISON STREET, 51.40 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

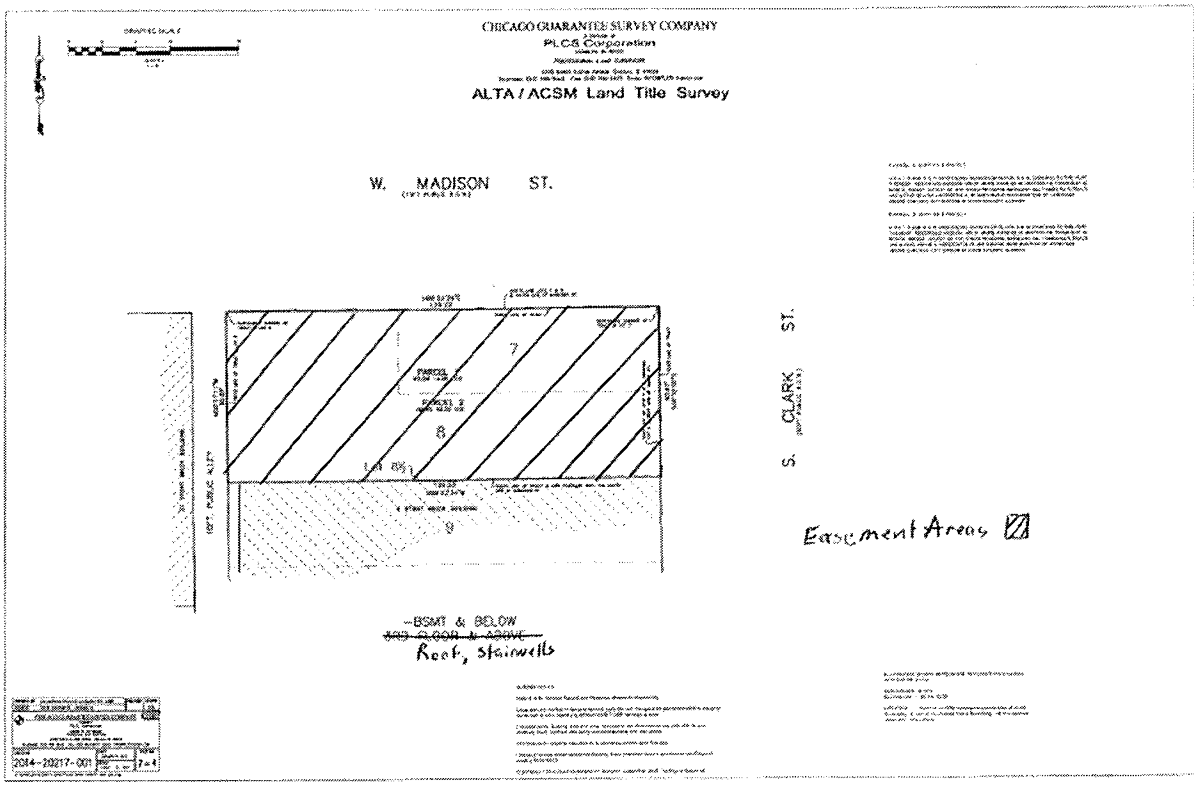
Commonly known as 105 West Madison Street, Chicago, Illinois

Permanent Index Numbers: 17-16-204-011-0000 and 17-16-204-012-0000

EXHIBIT 1.1(C)

EASEMENT EXHIBIT

(ATTACHED)


CHICAGO GUARANTEE SURVEY COMPANY
PLCS Corporation
ALTA / ACSM Land Title Survey
W. MADISON ST.
S. CLARK ST.
7
8
9
Easement Areas
BSMT & BELOW
3RD FLOOR & ABOVE
Roof, stairwells
2014-20217-001

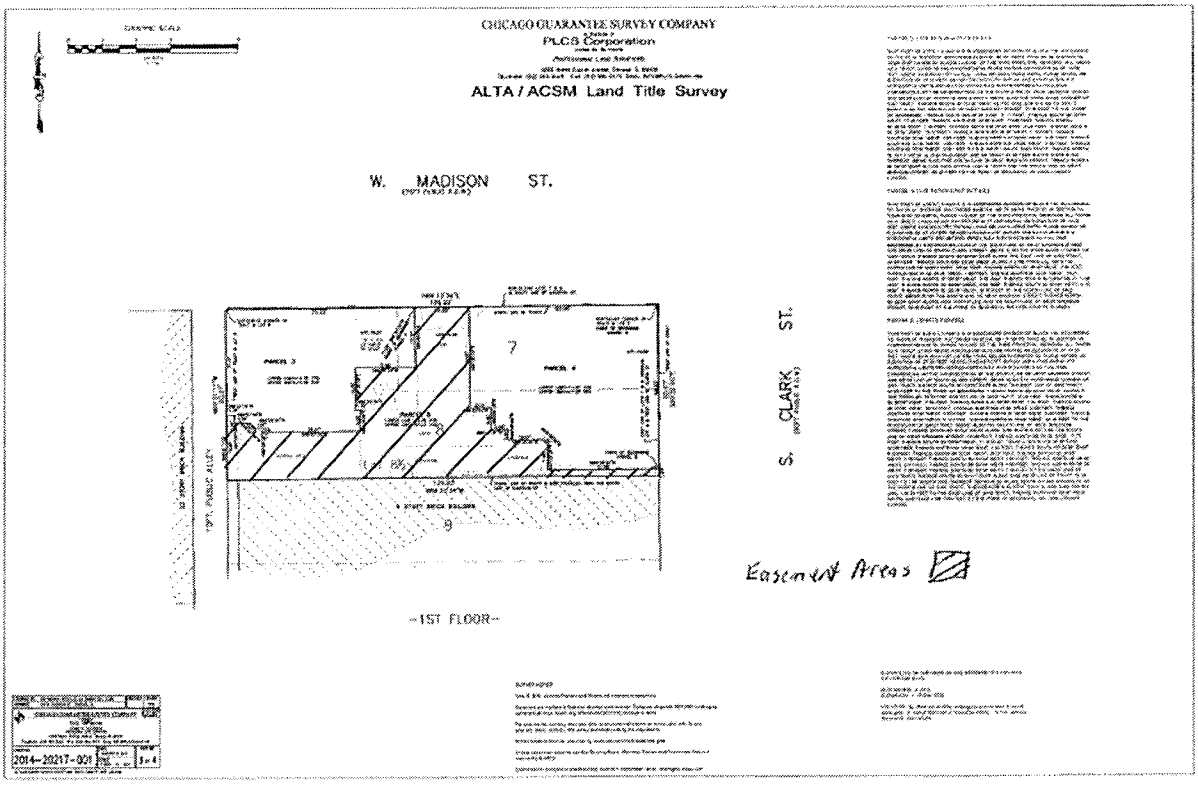
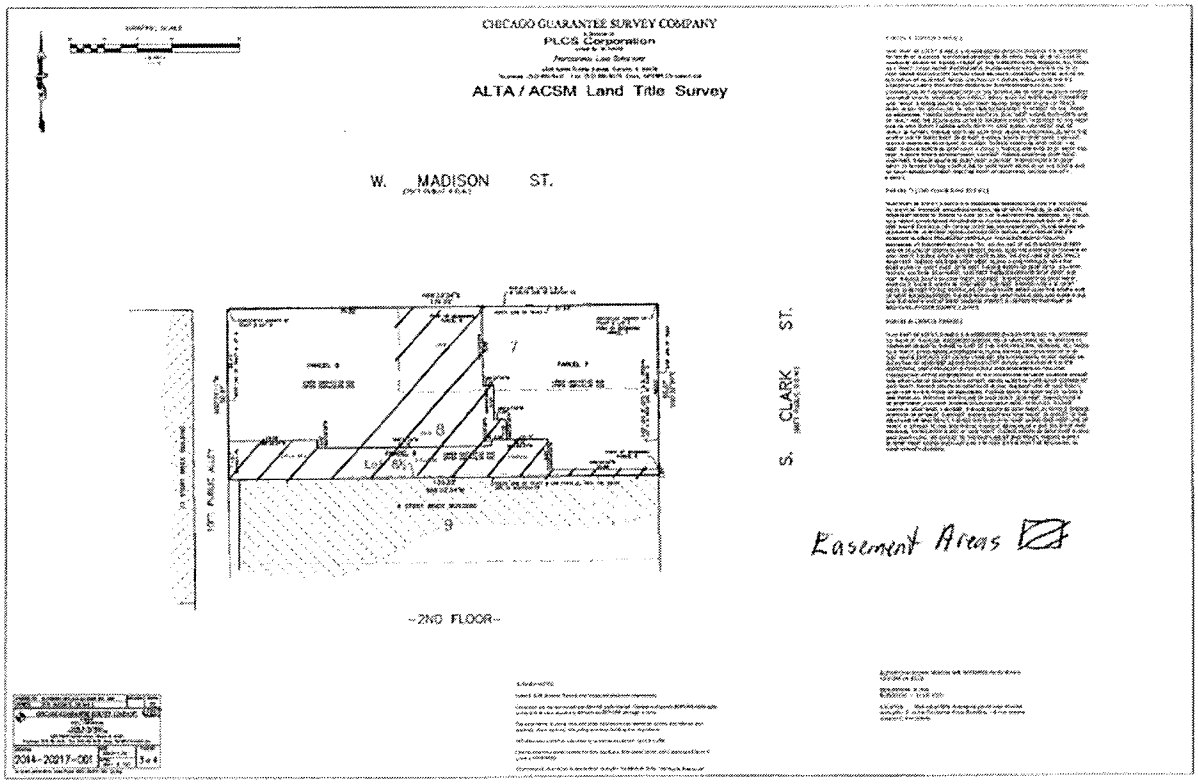
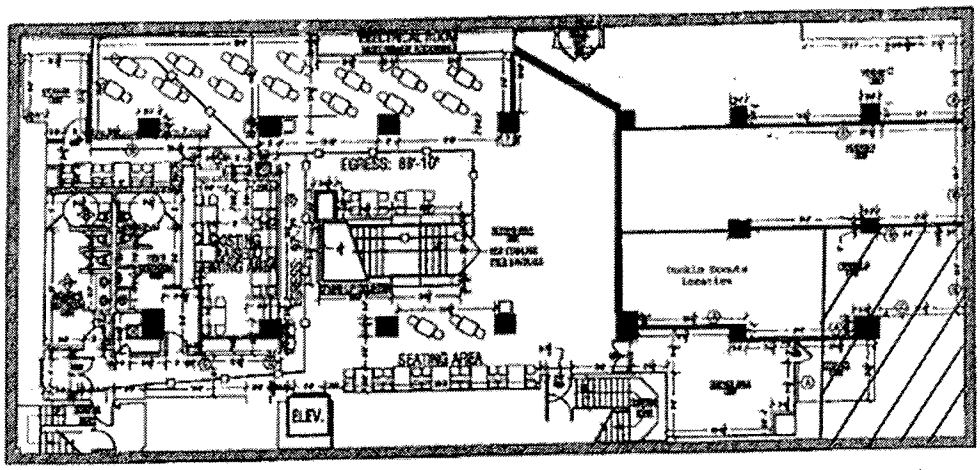


Exhibit 1.1(B) - 3


CHICAGO GUARANTEE SURVEY COMPANY
PLOS Corporation
ALTA / ACSM Land Title Survey
W. MADISON ST.
S. CLARK ST.
Easement Areas
~2ND FLOOR~



NORTH

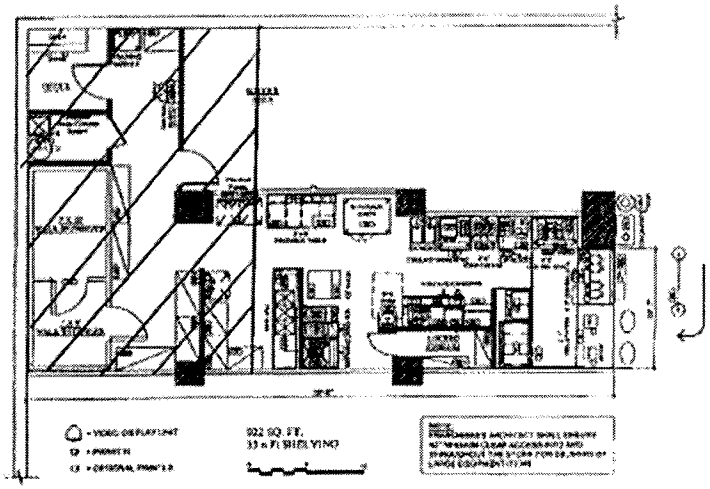
1
A-3.1

LOWER LEVEL
CONSTRUCTION & EXITING PLAN

SCALE: 1/4"=1'-0"

Basement Space

Warren Johnson
OFF 847-701-8000
WJohnson@wjarch.com

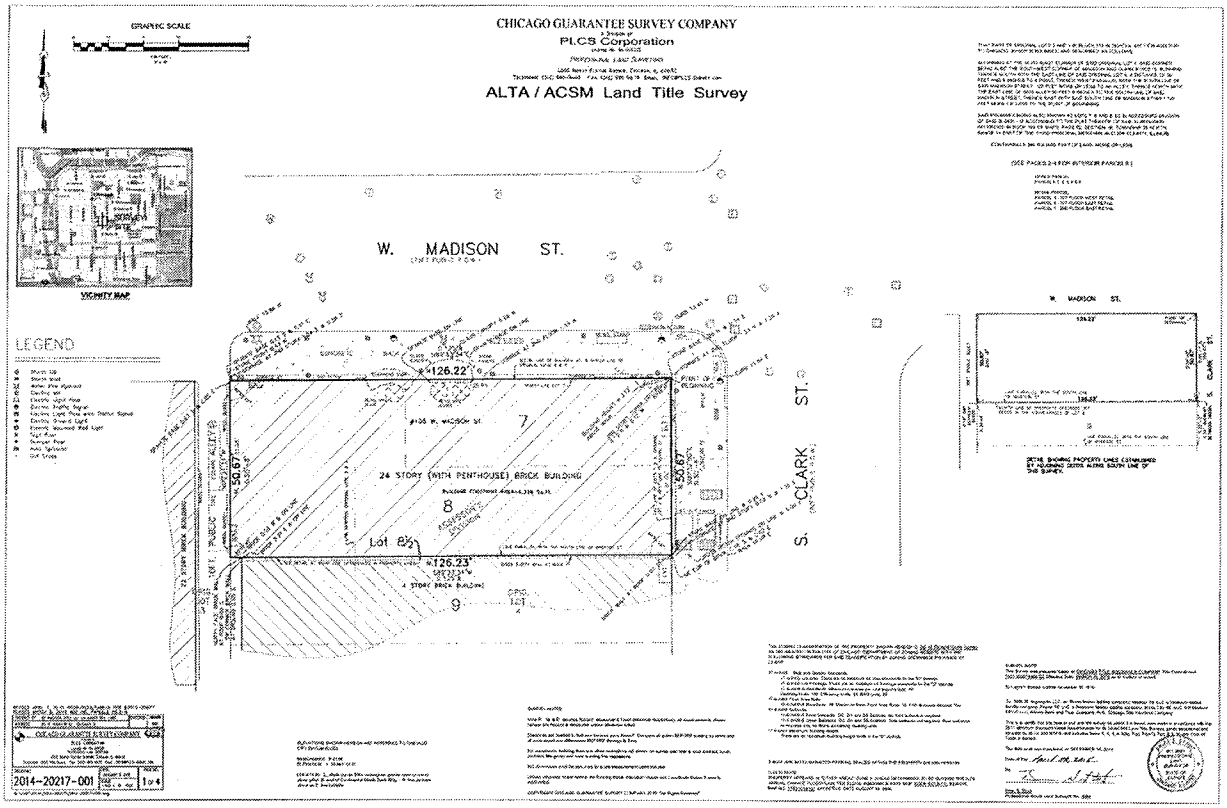


Basement Space

EXHIBIT 1.1(D)

SURVEY

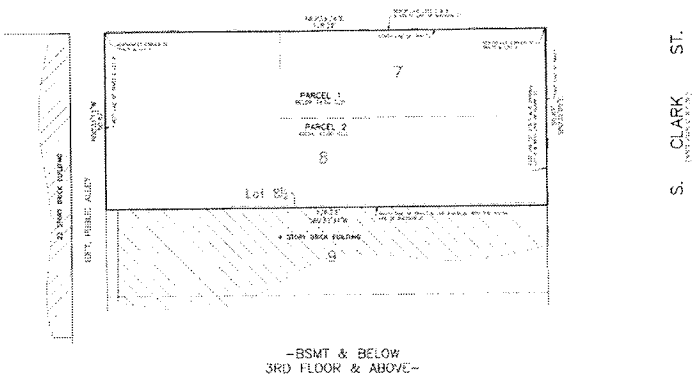
(ATTACHED)


CHICAGO GUARANTEE SURVEY COMPANY
PLCS Corporation
ALTA / ACSM Land Title Survey
GRAPHIC SCALE
VICINITY MAP
LEGEND
W. MADISON ST.
S. CLARK ST.
N126.22'
50.67'
24 STORY (WITH PENTHOUSE) BRICK BUILDING
Lot 8½
N126.23'
4 STORY BRICK BUILDING
W. MADISON ST.
2014-20217-001

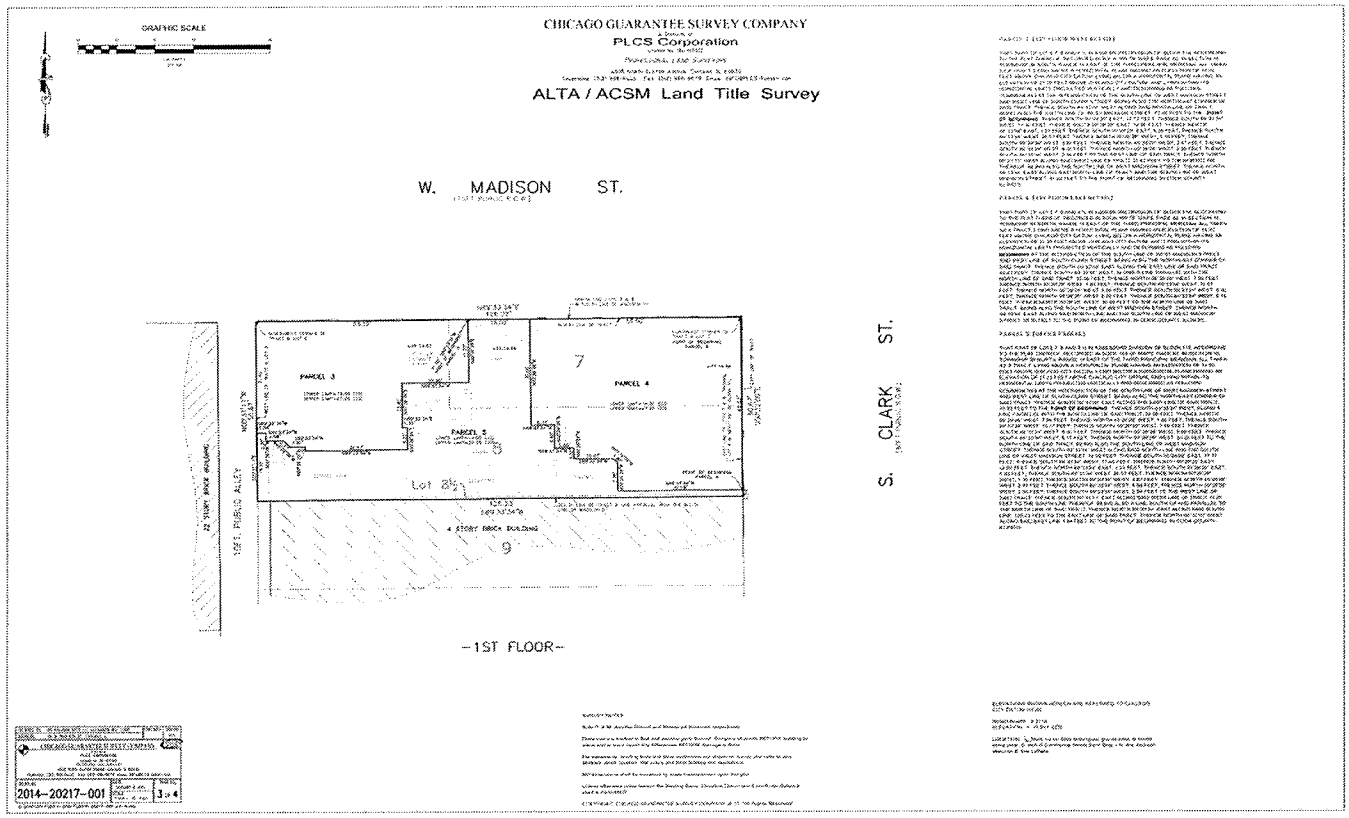
CHICAGO GUARANTEE SURVEY COMPANY

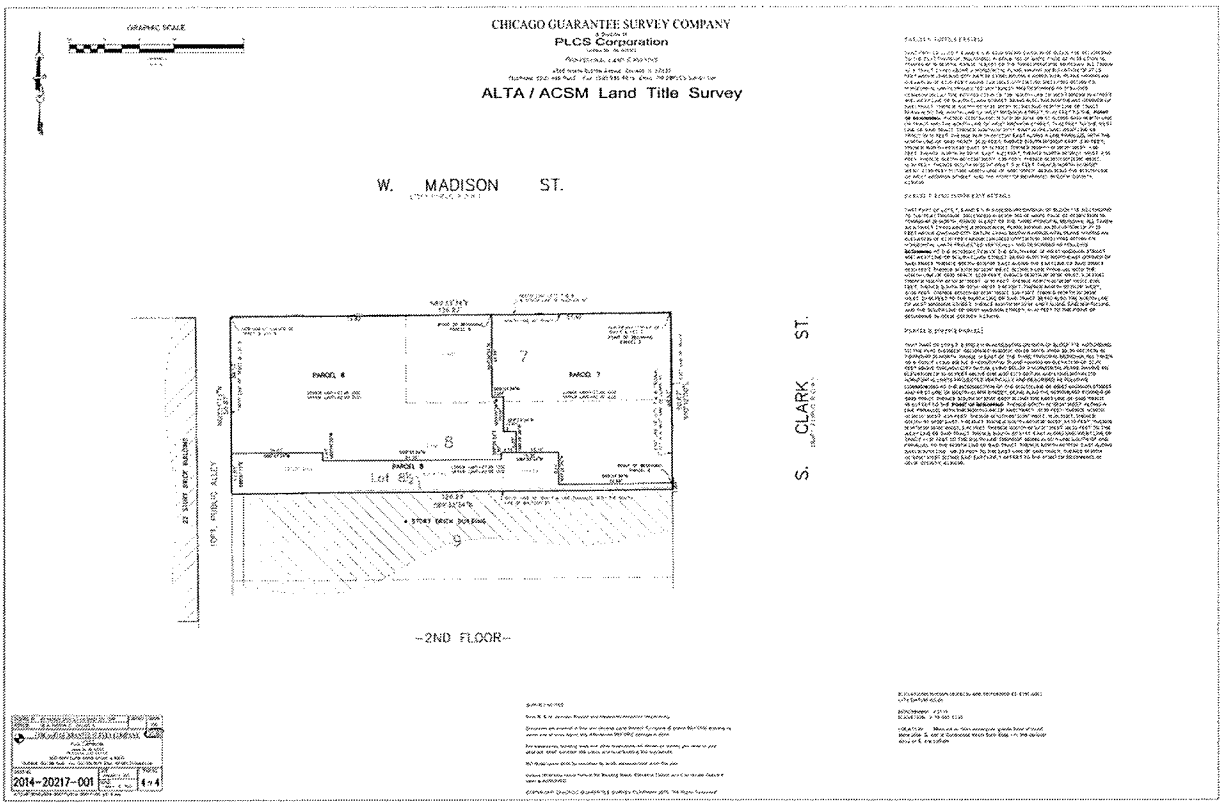
PLCS Corporation

ALTA / ACSM Land Title Survey



2014-20217-001


GRAPHIC SCALE
CHICAGO GUARANTEE SURVEY COMPANY
PLCS Corporation
ALTA / ACSM Land Title Survey
W. MADISON ST.
S. CLARK ST.
PARCEL 3
PARCEL 4
PARCEL 5
Lot 8
7
9
4 STORY BRICK BUILDING
2 STORY BRICK BUILDING
16FT. PUBLIC ALLEY
-1ST FLOOR-
2014-20217-001


GRAPHIC SCALE
CHICAGO GUARANTEE SURVEY COMPANY
PLCS Corporation
ALTA / ACSM Land Title Survey
W. MADISON ST.
S. CLARK ST.
PARCEL 6
PARCEL 7
PARCEL 8
Lot 8
7
8
9
22' STONE BRICK BUILDING
16FT. PUBLIC ALLEY
4 STORY BRICK BUILDING
2014-20217-001

—2ND FLOOR—

EXHIBIT 5.1(A)

DOMESTIC WATER

1. **Description of Services.**

City water is supplied throughout the Building via a pressure booster house pump, pressure reducing valves, fixtures, piping mains and risers providing water.

2. **Shared Systems**

Pipes, valves, pumps, storage tank equipment, conduits, booster pipe, controls or associated equipment that conveys or is used to convey domestic water, domestic hot water system, gas fired hot water heaters, recirculating pumps and vertical risers. It does not include fixtures such as toilets, faucets, sinks, showers or urinals. It does not include horizontal piping off of main piping that feeds individual or groups of fixtures. . The components of the Shared Systems are located in the Sub-Basement and various locations throughout the Building.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

EXHIBIT 5.1(B)

SANITARY AND STORM SEWER SYSTEM

1. **Description of Services.**

Sanitary and storm stacks, drains (including floor drains) and vents serving the building above grade are collected and discharged from the building via gravity drainage piping.

Drains are connected to horizontal and vertical piping that convey storm water from the Roof to the gravity drainage piping.

Below grade and on grade sanitary and waste water is discharged via two sewer ejector pumps and associated piping, floats, controls to the gravity outfall.

2. **Shared Systems**

Vertical stacks, drains and vents running through the building and horizontal piping connecting vertical stacks with the sewer.

Shared systems include the sanitary sewer system from the ground level and below that drain to ejector basins located in the Sub-Basement pump room. Shared Systems include the ejector system as well.

Shared systems include Roof drains and water table drains. Shared systems do not include plumbing fixtures and the horizontal piping connecting these to vertical stacks.

The components if the Sanitary and Storm Sewer system are located in various locations throughout the Building including the Sub-Basement.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

Office Owner shall be responsible for roof drains and any horizontal piping connecting them to vertical stacks.

Retail Owner shall be responsible for non-roof drains located within the Retail Property and any horizontal piping connecting them to vertical stacks.

EXHIBIT 5.1(C)

FIRE PROTECTION

1. **Description of Services.**

The fire pumps serve standpipes throughout the Building.

2. **Shared Systems**

Fire pumps and their associated devices and controls. Vertical risers, drains, standpipes, valves, tamper and flow switches, alarm panel and fire extinguishers.

Shared Systems do not include horizontal piping past the isolation valves next to the risers on each floor. Pipes past the valves are the responsibility of the Owner whose Portion the pipes are located in or that are served by such pipes.

The components of the Fire Protection System are located in various locations throughout the building including the Sub-Basement.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

Office Owner and Retail Owner shall, at their sole cost and expense, perform Maintenance and inspections as and when necessary of all other Facilities, systems and equipment providing fire suppression and communication located and contained within their respective Parcels; provided, however, Office Owner shall have the sole obligation and cost to bring all fire suppression systems into compliance with all Laws.

EXHIBIT 5.1(D)

HEATING EQUIPMENT

1. Description of Services.

A central steam boiler system consisting of two boilers is located in the Sub-Basement and provides heat for the entire Building. The boilers, along with gas boosters/regulators, boiler make-up water system and condensate pumps are all located in the Sub-Basement. Spaces are heated directly from piping connected to the boilers or, in the case of one space in the First Floor West Retail, by a forced air electric furnace system dedicated to that space.

2. Shared Systems

Steam boilers, burners, temperature automation controls, condensate tank, condensate pumps, vacuum pumps, steam traps, closed hot water loop and pump, water treatment for the boiler/heating system, gas boosters/regulators and associated controls, valves, piping,, electrical equipment and other materials and equipment associated with the steam heating system. Condensate vertical returns and pipes connecting the vertical returns to the condensate receiver. Steam pipes and valves supplying steam risers. Steam risers, Vertical condensate returns and piping between vertical returns and the condensate tank, steam traps.

Does not include horizontal condensate returns and steam traps between steam using equipment, and vertical condensate returns that serve a space of an Owner exclusively or finned tube/copper baseboard heat distribution within individual spaces.

The components of the heat shared systems are located in various locations throughout the building including the Sub-Basement.

3. Owner providing Maintenance and paying Operating Expenses for Shared Systems.

Office Owner

4. Other Comments

Maintenance of equipment and appurtenances for the distribution of steam servicing individual floors or spaces such as radiators, heaters, hot water coils, horizontal steam and condensate piping and finned tube will be the sole responsibility of the Owner of that floor or space.

Office Owner shall pay for natural gas Utility costs.

EXHIBIT 5.1(E)

COOLING SYSTEM

1. Description of Services.

The Cooling towers on the Roof and in the Sub-basement provide condenser water to air-handling units throughout the Building. The risers for this system run from the Roof down to the Basement. Condenser water pumps circulate condenser water through the risers.

Chillers located in the Sub-Basement serve the retail spaces and the basement food court areas.

2. Shared Systems

Cooling towers on the Roof along with all vertical and horizontal risers, pipe and associated pumps, valves, insulation or other appurtenances between the cooling tower and the point where a pipe dedicated to a floor or space branches off. Also includes associated controls and electrical equipment and all water treatment costs for the condenser water system including the cooling tower on the Roof.

Water chillers and their associated condenser and chilled water pumps, pipes, valves and controls as well as electrical equipment. Does not include the piping or coils beyond the shut off valves on individual air handling units or any air handling units serving an individual floor(s) or space.

Does not include the costs of make-up water and sewer which are included in Exhibit 5.1(A).

3. Owner providing Maintenance and paying Operating Expenses for Shared Systems.

Office Owner

4. Other Comments

All expenses associated with Retail Owner condenser water pumps, coils, controls, pipes and associated appurtenances now or hereafter servicing only Retail Owner, shall be the sole responsibility of Retail Owner.

Maintenance of equipment and appurtenances for the production or distribution of condenser or chilled water servicing individual floors or spaces such as chillers, pumps, piping and valves, etc., will be the sole responsibility of the Owner of that floor or space.

EXHIBIT 5.1(F)

ELECTRIC SERVICE

1. **Description of Services.**

(A) Commonwealth Edison, or a suitable and comparable electricity Utility provider, provides electric service to the Property via lines from its outlying substations to in-building transformer vault. ComEd owns and maintains the in-building vault and provides utilization voltage at 120/208 volts, 3 phases, 4 wires through customer-owned service feeders and service equipment.

(B) Maintenance when necessary of the Shared electrical systems serving the Building, including Shared: electrical panels and switchgear, house panels, distribution equipment, meter, transformers, electrical closets, the equipment located in the ComEd vault (to the extent Maintenance is not provided by ComEd), switch gear room, generator, electrical rooms and generator room (together with providing Maintenance of such rooms to keep them in good condition and repair), exterior lighting fixtures, and Basement common hallways; provided, however, Office Owner and Retail Owner shall, at their sole cost and expense, perform Maintenance as and when necessary of all other non-Shared systems, equipment, conduits, and other Facilities providing electrical service to their respective Parcels. The costs to be shared in accordance with Paragraph 3 below shall include all lease charges and other charges to be paid to ComEd or any successor utility provider for the electrical and other equipment and Facilities necessary for the operation of all such electrical systems, equipment and Facilities contemplated herein and satisfaction of all obligations under all agreements with ComEd with regard to any Shared systems or Facilities.

2. **Shared Systems**

ComEd Meter Nos. 10623, 3904, 5226 and 8548 (final digits only) located in the Sub-Basement measures electricity Utility costs for electric service to portions of the Office Property and the Retail Property.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

The Retail Parcel is separately metered. The Utility company will directly bill Office Owner for metered services for the Shared equipment and systems described in Paragraph 1(B) above. The Utility company will directly bill each tenant through such tenant's separate meter. At such time as the Retail Portion is separately metered, Retail Owner shall not pay Office Owner any reimbursements, expenses, costs, etc. related to the use distribution and management of electricity.

EXHIBIT 5.1(G)

FIRE ALARM/ LIFE SAFETY SYSTEM

1. **Description of Services.**

The Building currently has a distinct Fire Alarm and Detection Life Safety systems consisting of a fire and life-safety monitoring panel, elevator telephones, speaker/ strobe, alarm notification devices, heat detection and alarm initiating devices. In addition there is a generator status panel in the Lobby across from Elevator No. 4 and a generator for emergency lighting located in the generator of the Sub-Basement.

2. **Shared Systems**

The components of system are located throughout the Building.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

Office Owner and Retail Owner shall, at their sole cost and expense, perform Maintenance as and when necessary of all other Facilities, systems and equipment providing life safety located and contained within their respective Parcels, including, without limitation, pumps, pipes, valves, fire rated doors/closing devices, all automatic door closers, all automatic door lock release mechanisms, exit lights, sprinkler heads, fire hoses, safety gates in corridors, heat detectors, telephones, smoke detectors, sprinkler system, fire alarms and annunciators, if any; provided, however, Office Owner shall have the sole obligation and cost to bring all life safety systems into compliance with all Laws.

EXHIBIT 5.1(H)

IN HOUSE ENGINEERING/JANITORIAL & MAINTENANCE

5. Description of Services.

Services of in house engineering and maintenance personnel to repair, maintain and run mechanical, electrical, plumbing and other related systems, and clean the building and associated grounds.

6. Shared Systems

Direct and indirect costs of providing engineering and maintenance personnel labor including, without limitation, wages, payroll taxes, benefits, union dues, management oversight, uniforms and tools and general maintenance supplies.

7. Owner providing Maintenance and paying Operating Expenses for Shared Systems.

Office Owner

8. Other Comments

None.

EXHIBIT 5.1(I)

SECURITY SURVEILLANCE/ACCESS SYSTEM

1. **Description of Services.**

Video cameras, display monitor, DVR digital recorder, door sensors and control panel are used to view parts of the property and record video 24/7. Also included is an electronic fob access entry system limiting access after -hours or access to certain floors for security purposes.

2. **Shared Systems**

Video cameras in the Lobby, the Service Areas and in stairwells. Digital recorders. Wiring, cabling, and control panel connecting the shared system cameras, the recorders, fob access system and the monitors.

The components of the security surveillance access system are located in various locations throughout the building.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

None.

EXHIBIT 5.1(J)

SERVICE AREAS

1. **Description of Services.**

Provides loading and unloading facilities, repairs/construction, deliveries, dumpster use, refuse removal, and access to and use of the freight and lift elevators and stairs to the Basement and the second floor.

The Service Areas includes the spaces between the Lobby, the First Floor West Retail and the service corridor to alley adjacent to the Building and used by the Owners and their respective Occupants and other Permittees. This space includes heating, lighting, security system, fire panel, doors and their frames that lead out to the alley.

The freight elevator provides conveyance from the Service Areas to the Basement and Floors 2-24. The lift elevator provides conveyance from the Service Areas to the Basement and the Sub-Basement. An elevator machine room is located on the 24th floor, housing the cabling, generators, controls, etc., that enable the elevators to function.

2. **Shared Systems**

The Service Areas.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner.

4. **Other Comments**

Maintenance shall include, but not be limited to, concrete repair, regular pest control and scavenger service contracts, required to keep the Service Area (including the adjacent trash Facilities) in a clean, sightly, sanitary and safe condition, cleaning the overhead area and floor, and repairing and replacing any or all of the lighting and other equipment.

EXHIBIT 5.1(K)

CABLED COMMUNICATIONS AND RISER MANAGEMENT

1. **Description of Services.**

Cabled communications include fiber optic and twisted pair, data and coaxial cables enter the Building at various points to provide broadband, telephone lines and other forms of communications, data or entertainment. These run directly to tenants or to switching systems and then to tenant spaces.

"Riser Management" includes the inspecting, reporting, and specifying of where, how, and how many cables are located, run and identified. Excluded from riser management category is cabling running from Cellular antennae on roof to equipment in 'net pop' room in the Sub-Basement.

2. **Shared Systems**

Fiber optic and twisted pair cables, switching equipment cable risers and other associated equipment that serve both Owners.

Shared systems do not include horizontal wiring of cabling on tenant floors which feeds those tenants on that floor.

Riser Management.

3. **Owner providing Maintenance and paying Operating Expenses for Shared Systems.**

Office Owner

4. **Other Comments**

Cabling from cellular antennae on Roof to "Net Pop" room in Sub-Basement to be maintained by Retail Owner.

EXHIBIT 5.1(L)

STREET LEVEL EXTERIOR MAINTENANCE AND SNOW REMOVAL

1. **Description of Services.**

The Maintenance of street level exterior of the Property, including, but not limited to, sidewalks, streets, curbs, landscaping and drains, and including all customary snow and ice removal. To the extent not provided by the City, the applicable Owner shall perform Maintenance of all structural portions of such Owner's entry areas, and Office Owner shall perform the Maintenance of all structural portions of the balance of the sidewalk and entry.

2. **Owner Providing Maintenance of Street Level Exterior and Snow Removal and Paying Expenses.**

Office Owner.

3. **Other Comments**

None.

EXHIBIT 5.1(M)

ROOF MAINTENANCE

1. **Description of Services.**

   Maintenance repair and replacement, when necessary, of the Roof (which includes, without limitation, the structure, sheathing, membrane, storm drains, downspouts, gutters, parapet, and other structures and improvements located on the Roof of the Building).

2. **Owner Providing Maintenance of the Roof.**

   Office Owner.

3. **Other Comments**

   None.

EXHIBIT 5.1(N)

LOBBY

1. **Description of Services.**

Provides access to and use of the elevators, the Shared Stairwells, the First Floor East Retail, the First Floor West Retail and the Second Floor East Retail, and includes heating, lighting and security.

Elevators provide conveyance from the First Floor Lobby to the Basement, Sub-Basement and Floors 2-24. Elevators consist of four Passenger Elevators. The passenger elevators have emergency telephones in each cab which are hard lined to the security desk in the Lobby. An elevator machine room is located on the 24th floor, housing the cabling, generators, controls, etc. , that enable the elevators to function. There is a security access control on the passenger elevators on the second floor, preventing access to floors 2-24 from an elevator unless an access fob is utilized.

2. **Owner providing Maintenance and paying Operating Expenses.**

Office Owner.

3. **Other Comments**

Maintenance shall include, but not be limited to, to keep the Lobby, Shared Stairwells and the elevators in a clean, sightly, sanitary and safe condition, cleaning the overhead area and floor, and repairing and replacing any or all of the lighting and other equipment.

EXHIBIT 5.5

BILLING AND PAYMENT

This Exhibit 5.5 contains general rules for billing and payment between Office Owner and Retail Owner. If a specific procedure or a percentage of responsibility different from the "**Applicable Percentage**" (defined below) is provided for elsewhere in this Declaration, then those specific provisions shall govern. In the absence of specific provisions, these rules shall govern. In the absence of specific provisions to the contrary, replacements or additions to fixtures shall be made by the Owner that the replacements or additions benefit.

1. Operating Expenses.

Under ARTICLE 5 and each Exhibit under Section 5.1 of the Declaration, Office Owner provides services and is entitled to charge Retail Owner for "**Operating Expenses**" for each calendar year on account of such services. Retail Owner shall make monthly payments in advance on the first day of each calendar month on account of Operating Expenses for each calendar year for services rendered to such Owner under ARTICLE 5 of the Declaration by the Office Owner during such calendar year (each such monthly payment hereinafter referred to as a "**Progress Payment**"), as follows:

a. Office Owner shall, by November 1 of each calendar year, deliver to Retail Owner a written notice or notices ("**Projection Notice**") setting forth (i) Office Owner's reasonable estimates, forecasts or projections based on a detailed budget (collectively, the "**Projections**") of Operating Expenses for the services to be provided by Office Owner pursuant to ARTICLE 5 of the Declaration for the next succeeding calendar year, with an explanation as to increases anticipated from the prior year's operations and (ii) the amount of Retail Owner's Progress Payment. Such Projections shall be subject to the approval of Retail Owner, whose approval shall not be unreasonably withheld. If Retail Owner has not disapproved of the Projection Notice within thirty (30) days of receipt thereof, the Projection Notice shall be deemed approved by Retail Owner. The amount of each Progress Payment shall be in an amount equal to one–twelfth of the Projections for the calendar year times Retail Owner's Applicable Percentage. In the event circumstances change and Office Owner desires to send a revised Projection Notice and update the Projections during any calendar year, Office Owner may do so, but not more than once each calendar quarter. Any such updated Projection Notice shall be subject to the approval of Retail Owner, not to be unreasonably withheld.

b. On or before the first day of each calendar month, Retail Owner shall pay to Office Owner the Progress Payment shown in the applicable Projection Notice delivered pursuant to Section 1.a. above. In the event of a disagreement over the proper amount of any Progress Payment due to a disagreement over a Projection Notice, Retail Owner shall continue to make Progress Payments in the last agreed upon amount until the disagreement is settled. In the event of a shortfall in Progress Payments, Retail Owner shall also pay Office Owner a lump sum equal to its new Projections as delivered pursuant to Section 1.a. above less (i) any previous Progress Payments made for such calendar year and (ii) its monthly Progress Payments due for the remainder of such calendar year not yet due and payable. In the event that the amount of Progress Payments already made exceeds Projections at any time, then Office Owner shall credit against the Progress Payments next due the overpayment equal to the Progress Payments previously

made for such calendar year, minus Progress Payments which would have been payable for such period based on the new Projections.

c. Within ninety (90) days following the end of each calendar year, Office Owner shall determine the actual amounts of any or all components of Operating Expenses for such calendar year payable by Retail Owner and shall notify Retail Owner in writing (the "**Statement**") of its Applicable Percentage of such Operating Expenses for such calendar year, together with reasonably sufficient detail. If the actual Operating Expenses owed for such calendar year exceed the total of the Progress Payments paid by Retail Owner for such calendar year, then Retail Owner shall, within fifteen (15) days after receipt of the Statement, pay to Office Owner an amount equal to the excess of the Operating Expenses over the Progress Payments paid by Retail Owner for such calendar year. If the Progress Payments paid by Retail Owner for such calendar year exceed such Operating Expenses owed for such calendar year, then Office Owner shall, together with delivery of the Statement, pay such excess to Retail Owner or shall, (i) if such excess is less than $10,000.00 (in 2015 Equivalent Dollars), or (ii) upon the prior written consent of Retail Owner, credit such excess to such Operating Expenses payable after the date of the Statement until such excess has been exhausted.

d. No interest shall be payable on any Progress Payments paid by Retail Owner or on any excess of Operating Expenses for a calendar year over Progress Payments paid by Retail Owner for such calendar year. Interest shall be payable on excess funds not refunded to an Owner as and when required as provided in Paragraph 2(c) above from the due date until paid at the rate set forth in Section 10.4 of the Declaration.

2. Submission and Payment of Statements.

Except as otherwise expressly provided herein, each invoice or statement hereunder to be delivered from Office Owner to Retail Owner: (a) shall be submitted on or about the first day of the month and (b) shall be payable by Retail Owner within fifteen (15) days after receipt.

3. Defaulting Owner's Payments to Creditor Owner.

With respect to any period in which the Creditor Owner, pursuant to Section 5.6(A) of the Declaration, is performing such services which the Defaulting Owner has failed to perform, the Defaulting Owner shall make payments to the Creditor Owner performing the services as follows: the Defaulting Owner shall pay (a) all Operating Expenses incurred by the Creditor Owner in excess of those which would have been payable by the Creditor Owner had the Defaulting Owner provided services as required by this Declaration, and (b) the Creditor Owner's other reasonable out–of–pocket costs and expenses incurred in taking possession and operating the Facilities. The Creditor Owner may bill the Defaulting Owner therefor on a monthly basis.

4. Inspection of Books.

The Retail Owner and its authorized representatives shall have the right at all reasonable times to review and examine the books and records of Office Owner solely as they pertain to services under ARTICLE 5 of the Declaration in connection with the Property and the amount and allocation of charges for services under ARTICLE 5 of the Declaration which may be maintained on-site or which may be in the possession of a third party manager off–site, but not the general books and records of Office Owner. Such review and examination may be conducted no more than twice to charges related to any one calendar year and shall be performed, if at all, within six

(6) months after receipt of the Statement relating to such calendar year. Retail Owner shall be deemed to have waived future review and examination of books and records for such calendar year if the review and examination was not made on a timely basis. Retail Owner, in reviewing such books and records, shall treat such books and records as confidential, and the cost of such review shall be borne by Retail Owner, unless such review discloses that charges for services by Office Owner with respect to any annual period exceeded the proper charges by more than five percent (5%) in which event Office Owner shall bear such cost.

5. Definitions.

The terms used in this Exhibit shall have the meaning described to them in the Declaration, except as otherwise specified in this Paragraph:

"Applicable Percentage." The respective percentages specifically provided in Exhibit A to this Exhibit 5.5; provided, however, in the event Office Owner has acquired the Second Floor East Retail and acquires either the First Floor East Retail or the First Floor West Retail, all references in "Scenario #3" of Exhibit A to "4%" shall be changed to "2%" and to "10%" shall be changed to "5%."

"**Insurance Costs**". All premiums, charges and costs, including appraiser's or insurance or other consultant's fees, incurred by Office Owner to procure and maintain the insurance required under ARTICLE 8 of the Declaration to be shared, and any other share insurance coverages.

"Operating Expenses." The following expenses, costs and disbursements paid or incurred by Office Owner in connection with the performance by Office Owner of its obligations under ARTICLE 5 of the Declaration (other than those costs, expenses and disbursements falling within the definition of Cost of Replacement), subject to the provisions of each Exhibit under Section 5.1 of the Declaration and Exhibit A to this Exhibit 5.5:

a. Management not to exceed 3% of all other Operating Expenses;

b. Materials, parts, equipment, supplies, tools and cost of third party contractors;

c. Except as separately metered and paid by Retail Owner, the cost of the water, gas, power, fuel, electricity and other utilities;

d. Reasonable fees incurred in connection with outside professional services, such as outside maintenance contracts for monitoring, maintaining, testing, and certifying equipment; reasonable attorneys' fees and disbursements; reasonable accounting and auditing fees with respect to Operating Expenses; reasonable architect's and engineer's fees; and other reasonable professional fees and expenses;

e. Insurance Costs required under ARTICLE 8 of the Declaration to be shared;

f. Use taxes, permits and licenses;

g. Water treatment; and

h. All other third party out-of-pocket expenses paid or incurred in respect of such obligations performed by Office Owner in accordance with generally accepted principles

of sound management and accounting practices as applied to the Maintenance of comparable mixed use buildings in downtown Chicago.

In any case where a component of Operating Expenses covers more than the individual service outlined above, Office Owner shall make a reasonable allocation to such service.

Operating Expenses shall not include Utility costs, taxes, interest or amortization payments on any Mortgage or Mortgages, rental under any ground or underlying lease or leases, wages, salaries or other compensation paid to any employees of Office Owner or any of its affiliates, any amounts for repairs or replacements of any Facilities if and to the extent such amounts are actually received by Office Owner from proceeds of insurance or warranties, that portion of any fees paid by Office Owner to any affiliate thereof for any services or materials which exceed the then current market rate for such fees or services which would otherwise be payable to third party providers, or any penalties imposed by any governmental entity or Utility provider as a result of the late payment by Office Owner of any sums due and payable to such entities or providers (unless Retail Owner has failed to pay when due any Progress Payments or other amounts due from Retail Owner to Office Owner hereunder).

6. Interest and Late Payments.

The provisions of ARTICLE 10 of the Declaration shall control in the event an Owner fails to pay any sum due hereunder in a timely manner.

EXHIBIT A TO EXHIBIT 5.5

(ATTACHED)

105 W Madison				
Retail Owner Expense Schedule				
2/4/2015				
	Scenario #1	**Scenario #2**	**Scenario #3**	**Notes**
	Upon Closing	**BDC Sells East 2nd Floor**	**Retail Utility & Mech. Decoupled**	
2nd Floor Owner	Retail Owner Owns East 2nd Floor	Office Owner Owns East 2nd Floor	Office Owner Owns Second Floor	
1st Floor Owner	Retail Owner Owns 1st Floor Retail	Retail Owner Owns 1st Floor Retail	Retail Owner Owns 1st Floor Retail	
Basement	Retail Owner Pays Rent/CAM of $2,000/mo.	Retail Owner Pays Rent/CAM of $2,000/mo.	NA	
Mechanicals/utility connections	Retail Mechanicals As Is	Retail Mechanicals As Is	Retail Mechanicals Decoupled by Retail Owner	
Storage	Retail Owner Perpetual Use of 500 sf in Basement as Dry and/or Refrigerated Storage	Retail Owner Perpetual Use of 500 sf in Basement as Dry and/or Refrigerated Storage	Retail Owner Perpetual Use of 500 sf in Basement as Dry and/or Refrigerated Storage	Retail Owner has Perpetual Use of 500 sf in Basement Near Dunkin as Dry/Refrigerated Storage

I. Repairs/Maintenance - Systems				
	Retail Owner Allocation %	Retail Owner Allocation %	Retail Owner Allocation %	
Water	6%	4%	4%	
Sewer	6%	4%	4%	
Fire	6%	4%	4%	
Heating System	6%	4%	0%	
Cooling System	6%	4%	0%	
Electric System/Low Voltage	6%	4%	0%	
Life/Safety	4%	0%	0%	
Personnel (Building Engineer)	4%	0%	0%	
Security	4%	0%	0%	
All Other Common Areas	4%	0%	0%	
Service Areas/Elevator/Corridors	4%	0%	0%	
Pest Control	6%	4%	4%	
Refuse	6%	4%	4%	
Cable/Risers	0%	0%	0%	
Street/Snow	6%	4%	4%	
Roof Repair	4%	0%	0%	
Exterior Façade	0%	0%	0%	Office Owner and Retail Owner to repair/maintain exterior on space owned by each of them
Cell Tower	100%	100%	100%	Noted as reference; not building expense

Basement/Sub-basement	0%	0%	0%	
Elevator	4%	0%	0%	
Other Mechanical Systems	0%	0%	0%	
Generator	6%	4%	4%	Excludes Cap X.
Windows	0%	0%	0%	Office Owner and Retail Owner to repair/maintain floors owned
All other interior/exterior maintenance	0%	0%	0%	
II. Capital Expenditures				
Building Exterior for Class "L" and/or Tax Credits	15%	10%	10%	Office Owner to reimburse Retail Owner pari passu for all hard/soft costs expended to obtain Class "L" and/or Tax Credits. Upon achievement of Class "L" status, second floor purchase price shall include/reimburse Retail Owner for 10% of all hard/soft costs to achieve such status
Building Interior for Class "L" and/or Tax Credits	0%	0%	0%	Office Owner to reimburse Retail Owner pari passu for all hard/soft costs expended to obtain Class "L" and/or Tax Credits
Life/Safety Fire	0%	0%	0%	Retail Owner to absorb costs incurred prior to closing
Heating/Cooling Systems	0%	0%	0%	Pursuant to PSA, Office Owner to reimburse Retail Owner for all hard/soft costs up to $113,000

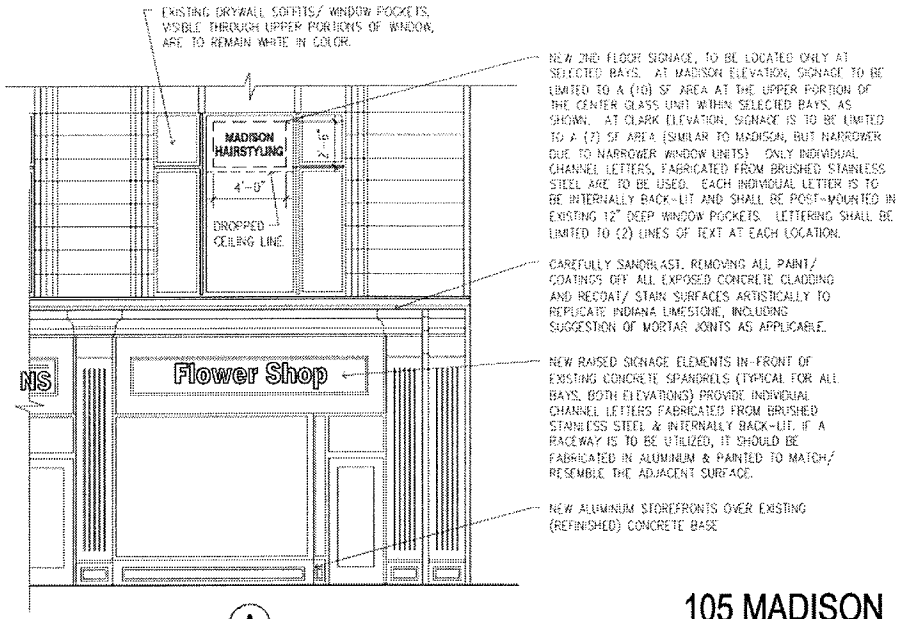
Security	0%	0%	0%	Office Owner to reimburse Retail Owner for security system upgrades estimated at $15,000
Roof	4%	4%	4%	Office Owner and Retail Owner to repair/maintain floors owned
Exterior Masonry	0%	0%	0%	Reimbursed equal installments over 10 years
Elevator	0%	0%	0%	N/A
Structural	6%	4%	4%	Scope limited to work listed in PSA
All Other Capital Expenditures	0%	0%	0%	N/A
III. Vendors & Contracts				
Insurance	6%	4%	4%	Property, terror, $5M liability & umbrella
Common Area Electric Bill	4%	0%	0%	Pay for 2nd floor; not using lobby. Retailers are metered
Gas Bill	6%	4%	0%	
Water/Sewer Bill	6%	4%	0%	
Low Voltage	0%	0%	0%	Separate Phone, Internet, CATV
Common Area Cleaning Services	0%	0%	0%	Retail Owner to pay for mopping second floor until second floor is sold
Management Fee	6%	4%	4%	Office Owner mgt. fee - 3% of gross building income multiplied by ownership percentage

Window Washing	0%	0%	0%	Office Owner and Retail Owner to repair/maintain floors owned
Elevator	0%	0%	0%	N/A
Security	4%	0%	0%	Doorman
All Other Vendors & Contracts	0%	0%	0%	N/A
Property Tax/Protest	15%	10%	10%	Retail Owner will take lead in tax protest and Retail Owner will pay prorata share of tax, legal and related costs and receive prorata share of any tax savings until PIN's separated.

EXHIBIT 6.5

SIGNAGE STANDARDS

(ATTACHED)



A

DETAIL
ELEVATION

4/7/15

4' 2' 0 2' 4'

GRAPHIC SCALE

105 MADISON

MADISON OPCO, LLC
BAKER DEVELOPMENT
NOVEL ARCHITECTS

EXISTING NORTH ELEVATION
(MADISON FACADE)

4/7/15

8' 4' 0 4' 8'

GRAPHIC SCALE

105 MADISON

MADISON OPCO, LLC
BAKER DEVELOPMENT
NOVEL ARCHITECTS

EXISTING NORTH ELEVATION
(MADISON FACADE)

4/7/15

8' 4' 0 4' 8'

GRAPHIC SCALE

105 MADISON

MADISON OPCO, LLC
BAKER DEVELOPMENT
NOVEL ARCHITECTS

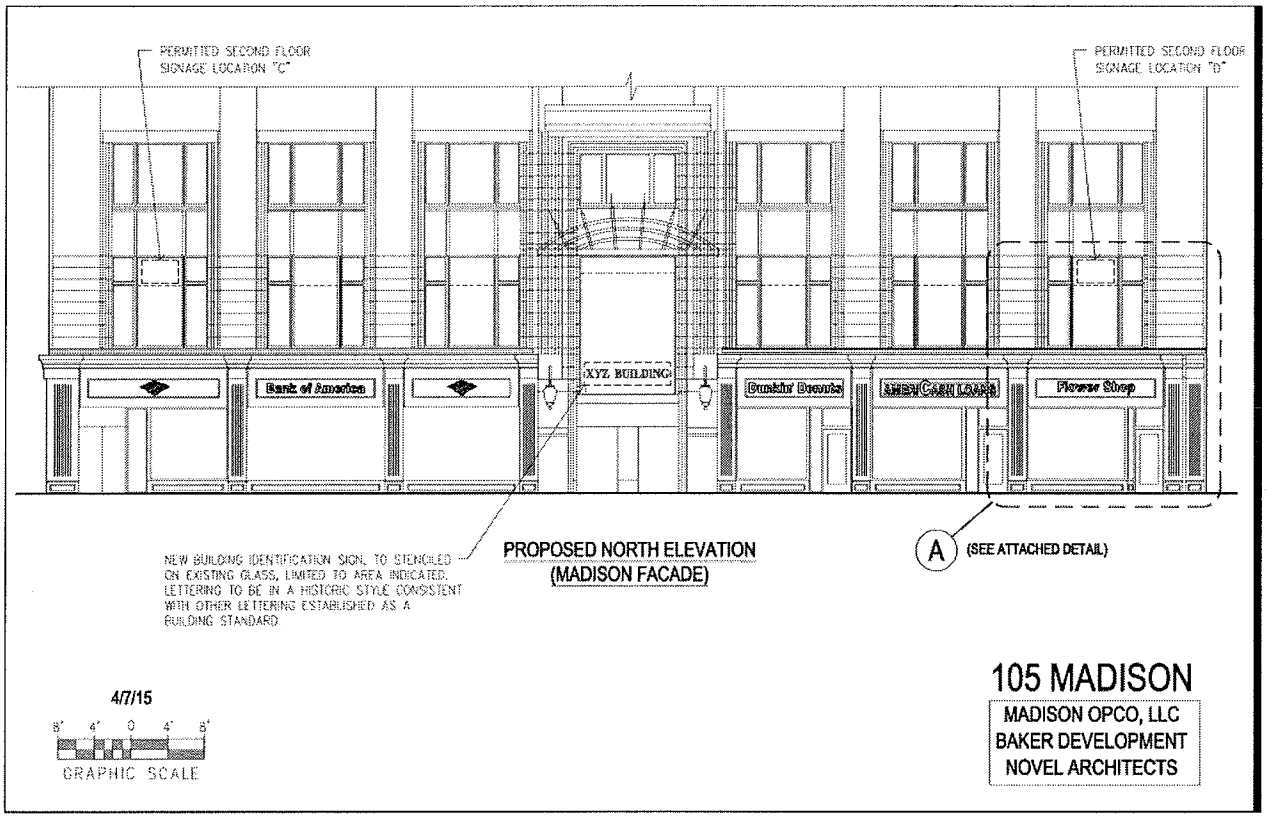

PERMITTED SECOND FLOOR SIGNAGE LOCATION "C"
PERMITTED SECOND FLOOR SIGNAGE LOCATION "D"
XYZ BUILDING
Bank of America
Dunkin' Donuts
Flower Shop
NEW BUILDING IDENTIFICATION SIGN, TO STENCILED ON EXISTING GLASS, LIMITED TO AREA INDICATED. LETTERING TO BE IN A HISTORIC STYLE CONSISTENT WITH OTHER LETTERING ESTABLISHED AS A BUILDING STANDARD
PROPOSED NORTH ELEVATION
(MADISON FACADE)
A
(SEE ATTACHED DETAIL)
4/7/15
8' 4' 0 4' 8'
GRAPHIC SCALE
105 MADISON
MADISON OPCO, LLC
BAKER DEVELOPMENT
NOVEL ARCHITECTS

EXHIBIT 16.1

DEPOSITARY AGREEMENT

This DEPOSITARY AGREEMENT (this "**Agreement**") is made this ____ day of _____, 20____ by among _____ ("**Depositary**") and [Owners under the Declaration] (collectively, the "**Owners**").

RECITALS

A. Owners are bound by that certain Declaration (the "**Declaration**"), which Declaration was recorded with the Office of the Recorder of Deeds of Cook County, Illinois on _____, 2002, as Document No. _____.

B. The Declaration provides for the appointment of a Depositary to receive all insurance proceeds and contributions by self-insuring entities and condemnation awards and to disburse such moneys in accordance with the Declaration.

C. Depositary has been appointed the Depositary under the Declaration and agrees to act in accordance with the terms and provisions hereof.

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

Depositary and Owners shall be bound by and shall be subject to and shall perform in accordance with all terms and provisions of the Declaration, as amended from time to time, including, without limitation, ARTICLE 16 of the Declaration, provided, however, Depositary shall not be bound without its prior written consent by any amendment to the Declaration which materially alters the scope of its duties or rights thereunder.

All notices, demands, elections or other communication required, permitted or desired to be served under the Declaration shall be given in the manner provided in ARTICLE 19 of the Declaration, except that all such notices to Depositary shall be addressed as below stated:

_____

_____

_____

The liability under this Declaration of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Owned Facilities (including insurance and condemnation proceeds attributable to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and no other assets of such Owner, and except as provided in this Declaration or in the Declaration. Enforcement of liability under Section 8.7 of the Declaration, and ARTICLE 9 of the Declaration of Owners who elect to self-insure shall not be subject to the foregoing limitation. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and negative capital account of a partner in a partnership or a member in a limited liability company which is an Owner and an obligation of a partner to contribute capital to the partnership or a member to contribute capital to the limited liability company which is an

Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the covenants or conditions contained herein.

Capitalized terms which are not defined in this Declaration shall have the same meanings as in the Declaration.

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

OWNERS:

_____

_____

_____

DEPOSITARY:

_____

_____

_____