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**RECIPROCAL EASEMENT AND OPERATING AGREEMENT**

**THIS RECIPROCAL EASEMENT AND OPERATING AGREEMENT**  
("Agreement") is dated this \_\_\_\_ day of June 2016, and is by and between the following parties:

Portland Tower L.L.C., a Minnesota limited liability company ("Declarant");  
Portland Tower Association, a Minnesota non-profit corporation ("Portland Tower"); and  
Sexton Parking Association, a Minnesota non-profit corporation ("Sexton Parking")  
collectively the "Parties".

**RECITALS**

**WHEREAS**, Declarant is the owner of certain real property located in the County of Hennepin, State of Minnesota, and legally described in the attached Exhibit A ("Property"); and

**WHEREAS**, Declarant has constructed a building on the Property that includes three (3) underground levels and seventeen (17) aboveground stories ("Building"). The Building will contain residential units, a nonresidential unit and parking units; and

**WHEREAS**, the Declarant has established or will establish a condominium named "Portland Tower," identified as CIC No. 2028, and located on that portion of the Property legally described in the attached Exhibit B ("Portland Tower Property") consisting of residential units, one nonresidential unit, parking units, and related improvements, located within the Building; and

**WHEREAS**, Portland Tower Association is a nonprofit corporation which has been created pursuant to Minnesota Statutes Chapter 317A, and also Minn. Stat. § 515B.3-101. All members of the association consist of owners of units in CIC No. 2028; and

**WHEREAS**, the Declarant has established or will establish a condominium named "Sexton Parking," identified as CIC No. 2029, and located on that portion of the Property legally described in the attached Exhibit C ("Sexton Parking Property") consisting of parking units and related improvements, located within the Building; and

**WHEREAS**, Sexton Parking Association is a nonprofit corporation which has been created pursuant to Minnesota Statutes Chapter 317A, and also Minn. Stat. § 515B.3-101. All members of the association consist of owners of units in CIC No. 2029; and

**WHEREAS**, Declarant desires to grant, establish and convey certain access, structural support and related easement rights, and establish certain maintenance and cost sharing obligations between Portland Tower Association and Sexton Parking Association, as more specifically set forth herein, so as to provide for the economic and efficient, use, occupancy, maintenance and operation of the Building.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants and agreements contained herein, and for good and valuable consideration, Declarant hereby declares that the Property shall be held, transferred and used subject to and together with the following easements, covenants and restrictions.

1. Maintenance and Operation Between Portland Tower and Sexton Parking. The maintenance and operational authority and related obligations with respect to Portland Tower and Sexton Parking shall be as follows:

1.1 Portland Tower Association shall inspect, maintain, repair and replace (i) the Portland Tower property; (ii) all equipment, controls, utilities, components and operating systems serving or benefiting only Portland Tower regardless of their location; and (iii) the “Shared Facilities” regardless of their location. “Shared Facilities” means the Building’s exterior facade, foundation, load bearing structure, roof, sewer and water mains, mechanical, plumbing, electrical, heating, ventilation and fire control systems, maintenance of trash room, and other controls, facilities, utilities, components or operating systems serving or benefiting both Portland Tower and Sexton Parking.

1.2 Sexton Parking Association shall inspect, maintain, repair and replace (i) the Sexton Parking property (excluding the Shared Facilities); and (ii) all other equipment, controls, utilities, components and operating systems serving or benefiting only the Sexton Parking regardless of their location.

1.3 Portland Tower Association and Sexton Parking Association shall each (i) perform their respective obligations hereunder in a good and workmanlike manner using materials and construction methods that are of a quality and character consistent with or better than the original construction of the Building; (ii) maintain their respective properties in first-class condition performing all necessary cleaning, janitorial, pest control and related services as shall be necessary to maintain such condition; (iii) comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by any federal, state, or local or other governmental body or agency having jurisdiction over the Building; (iv) proceed diligently and promptly with the required maintenance, repair or replacement activity; and (v) employ every reasonable effort to avoid damage to or interference with the Portland Tower Property or the Sexton Parking Property, respectively.

1.4 Portland Tower Association and Sexton Parking Association shall each have authority to perform or contract for the performance of its maintenance, repair and replacement obligations hereunder on such terms and with such vendors as the contracting party may reasonably determine.

1.5 Portland Tower Association or Sexton Parking Association, as the case may be, shall (i) be obligated to pay for and promptly discharge all costs, expenses and other obligations incurred in carrying out the respective maintenance, repair and replacement activities of such party, subject only to Section 2 below; and (ii) keep the Property free from mechanics', materialmen's and other liens arising in connection with such activities.

1.6 If, in the course of conducting its construction, maintenance, repair or replacement activities, one of the parties or its agents or employees, damages the property of the other party, the party directly or indirectly causing the damage shall promptly restore the damaged property to substantially the same or better condition as existed prior to the performance of the construction, maintenance, repair or replacement activities.

1.7 Portland Tower Association and Sexton Parking Association shall cooperate in good faith in the performance of the maintenance, repair and replacement activities referenced above and in the procurement of services, utilities, maintenance, management, insurance, operations and the like, so as to promote uniformity, economy and efficient operation of the Building.

2. Sharing of Certain Maintenance Costs. Unless otherwise agreed in writing between Portland Tower Association and Sexton Parking Association, (i) costs for shared utilities, if any, (ii) costs incurred by Portland Tower Association in performing its maintenance, repair and replacement obligations with respect to the Shared Facilities (collectively "Shared Costs"); and (iii) costs of shared insurance as described in Sections 9.1.1 and 9.1.2 of the Declarations of CIC No. 2028 and CIC No. 2029 ("Insurance Cost") shall be shared by Portland Tower Association and Sexton Parking Association in accordance with the following terms and conditions:

2.1 Shared Costs shall be allocated between Portland Tower Association and Sexton Parking Association, with Portland Tower Association responsible for 85 percent of such costs and Sexton Parking Association responsible for 15 percent of such cost. Insurance Cost shall be allocated between Portland Tower Association and Sexton Parking Association, with Portland Tower Association responsible for 90 percent of such costs and Sexton Parking Association responsible for 10 percent of such cost. Portland Tower Association and Sexton Parking Association may agree in writing to a different allocation for a certain fiscal year or years.

2.2 On or before November 1 of each calendar year, Portland Tower Association shall submit to Sexton Parking Association a budget, itemized in reasonable detail, of all Shared Costs expected to be incurred by Portland Tower Association during the next calendar year. The budget shall specifically note the estimated costs of expected repairs or replacements to be commenced during the next calendar year that would constitute capital improvements under sound accounting principles and the estimated amount of Shared Costs to be collected, held and expended as reserves for capital improvements, replacement and repairs. Portland Tower Association shall use commercially reasonable efforts to adhere to the budget in carrying out its activities hereunder, and shall notify Sexton Parking Association as soon as practicable in the event of a material deviation from the budget.

2.3 At the end of each calendar month or other period agreed to in writing by the parties (the "Cost Period"), Portland Tower Association shall submit to Sexton Parking Association a statement, itemized in reasonable detail, of the Shared Costs incurred by Portland Tower Association during the preceding Cost Period. All such statements shall be payable within 30 days following submission.

3. Declaration of Easements in Favor of Sexton Parking Property. Subject to the restrictions set forth in this Agreement, Declarant hereby grants, conveys and establishes the following easements in, over and through the Portland Tower Property for the benefit of the Sexton Parking Property and the Sexton Parking Association and its designees, and the Unit Owners and Occupants:

3.1 Exclusive easements for (i) encroachments upon the Portland Tower Property caused by the construction, reconstruction, repair, shifting, settlement or movement of any part of the Sexton Parking Property or Building; and (ii) the use, enjoyment, maintenance and habitation of any part of the Sexton Parking Property which encroaches upon the Portland Tower Property as a result of any of the aforementioned causes.

3.2 Non-exclusive easements for structural support in and to all footings, walls, columns, joists, girders and other structural components located in or passing through the Portland Tower Property for the support of the Sexton Parking Property or the Building.

3.3 Non-exclusive easements for access to and the use and benefit of any Shared Facilities located within the Portland Tower Property.

3.4 Non-exclusive easements for access to the Sexton Parking Property, all equipment, controls, utilities, components and operating systems benefiting or serving such property and any and all related improvements as are reasonably necessary for the construction, maintenance, repair and replacement thereof.

3.5 The use of the areas subject to the easements shall be expressly limited to the purposes specified in this Agreement and no other use shall be permitted which impairs the use of such areas for their intended purposes. Recognizing the mixed-use

nature of the Building and that the exercise by a benefited party of the easement rights established herein may affect the use and operation of the property of other parties, the rights provided by the easements shall be exercised only in a reasonable and cooperative manner and only for the intended purposes, so as to promote the full and efficient use and operation of the Building as a whole and to minimize interference with the quiet and peaceful enjoyment of the Building.

4 Declaration of Easements in Favor of Portland Tower Property. Subject to the restrictions set forth in this Agreement, Declarant hereby grants, conveys and establishes the following easements in, over and through the Sexton Parking Property for the benefit of the Portland Tower Property and the Portland Tower Association and its designees, and the unit owners and occupants:

- 4.1 Exclusive easements for (i) encroachments upon the Sexton Parking Property caused by the construction, reconstruction, repair, shifting, settlement or movement of any part of the Portland Tower Property or Building; and (ii) the use, enjoyment, maintenance and habitation of any part of the Portland Tower Property which encroaches upon the Sexton Parking Property as a result of any of the aforementioned causes.
- 4.2 Non-exclusive easements for structural support in and to all footings, walls, columns, joists, girders and other structural components located in or passing through the Sexton Parking Property for the support of the Portland Tower Property or the Building.
- 4.3 Non-exclusive easements for access to and the use and benefit of any Shared Facilities located within the Sexton Parking Property.
- 4.4 Non-exclusive easements for access to, all equipment, controls, utilities, components and operating systems benefiting or serving such property and any and all related improvements as are reasonably necessary for the construction, maintenance, repair and replacement thereof.
- 4.5 The use of the areas subject to the easements shall be expressly limited to the purposes specified in this Agreement and no other use shall be permitted which impairs the use of such areas for their intended purposes. Recognizing the mixed-use nature of the Building and that the exercise by a benefited party of the easement rights established herein may affect the use and operation of the property of other parties, the rights provided by the easements shall be exercised only in a reasonable and cooperative manner and only for the intended purposes, so as to promote the full and efficient use and operation of the Building as a whole and to minimize interference with the quiet and peaceful enjoyment of the Building.

5 Waiver. No person or entity having or acquiring any interest in the Property, including but not limited to owners, tenants, occupants, Portland Tower Association, Sexton Parking Association, and their successors and assigns, shall have the right to contest or challenge the easements, rights, restrictions, covenants and conditions set forth in this Agreement on the

basis of the passage of time. All such persons and entities, by their assertion or acceptance of any interest in the Property, are hereby estopped from asserting and shall be deemed to have waived any claim that any provision of this Agreement is invalid or unenforceable in whole or in part due to the passage of time whether such claim arises or is brought forth under Minnesota Statutes Section 500.20, Minnesota Statutes Section 541.023, or any other statute or law heretofore or hereafter enacted.

6 Construction and Binding Effect. Each and all of the easements, covenants, rights, obligations and restrictions granted, conveyed or established by this Agreement are affirmative covenants which shall run with the land and shall be interpreted and construed as integral, essential and non-severable parts of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Portland Tower Association, the Sexton Parking Association, the owners, tenants and occupants, their successors and assigns, and all other persons having or acquiring an interest in CIC Nos. 2028 and 2029.

7 Interpretation. The provisions of this Agreement shall be liberally interpreted and construed to effectuate its purposes of creating a uniform plan for the administration and maintenance of the Building. In the event of any conflict or inconsistency between or among the provisions of this Agreement or similar documents filed against the Property from time to time, this Agreement shall control to the extent permitted by other applicable law.

8 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota. If any portion of this Agreement is unenforceable under Minnesota law, the balance of the Agreement shall remain in full force and effect if enforcement of the remainder of the Agreement is reasonably practicable.

9 Duration and Amendment. The easements, covenants, restrictions and obligations established hereby shall be effective upon the recording of this Agreement in the Hennepin County Registrar of Titles office and shall be perpetual unless terminated or modified by an amendment. This Agreement may be amended only with the approval of the Portland Tower Association and the Sexton Parking Association. The amendment shall be reduced to writing, signed by the approving parties and recorded in the Hennepin County Registrar of Titles office.

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**EXHIBIT A**

Legal Description of Property

Tracts A and B, Registered Land Survey No. 1841, Hennepin County, Minnesota

Torrens Property

**EXHIBIT B**

Legal Description of Portland Tower

Tract A, Registered Land Survey No. 1841, Hennepin County, Minnesota

Torrens Property

**EXHIBIT C**

Legal Description of Sexton Parking

Tract B, Registered Land Survey No. 1841, Hennepin County, Minnesota

Torrens Property