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Cook County Recorder 79.00



June 15, 2000

**DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS
FOR THE
1400 FILLMORE TOWNHOMES**

THIS DECLARATION is made by Fillmore Development, L.L.C., an Illinois limited liability corporation, ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the titleholder of the real estate located in Chicago, County of Cook, State of Illinois, legally described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Declarant desires to establish certain rights, easements and privileges in, over and upon the said real estate and certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper use, conduct and maintenance thereof, as hereinafter set forth, for the mutual benefit of all owners and occupants and intends that all owners, occupants, and mortgagees of the real estate or portions thereof and any other persons hereinafter acquiring any interest therein shall hold their respective interests subject thereto, and all such rights, easements, privileges, covenants, conditions, restrictions and obligations are in furtherance of a plan to promote and protect the quality of residence in the development and are established for the purpose of preserving, enhancing and perfecting the value, desirability and attractiveness of the development and for the maintenance, repair, replacement and administration of the common areas and certain other portions of the development:

NOW THEREFORE, the Declarant, as the legal titleholder of the real estate described in Exhibit "A" and for the purposes hereinabove set forth, declares as follows:

DEFINITIONS. As used herein, unless the context otherwise requires:

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(a) "Articles of Incorporation" means the articles of incorporation of the Association, a copy of which is attached hereto and made a part hereof as Exhibit "B", as amended from time to time.

(b) "Association" means an Illinois not-for-profit corporation, formed (or to be formed, as the case may be) pursuant to the Articles of Incorporation, known as 1400 FILLMORE TOWNHOME ASSOCIATION.

(c) "Board" means the Board of Directors of the Association.

(d) "Bylaws" means the Bylaws of the Association attached hereto and made a part hereof as Exhibit "C", as amended from time to time.

(e) "Common Area" means all of the Development, except the self-contained dwelling structures and the individual parcels of land conveyed therewith as described in clauses (i) and (ii) of paragraph (n) hereof, and shall include, but not be limited to, any project entrance signs, landscaping, lighting systems, fencing, walkways, private streets, and public and private utility lines or facilities located outside the boundaries of such individual parcels of land.

(f) "Common Expenses" means all expenses of administration, operation, maintenance and repair of the Common Area, and all other expenses incurred by the Association in conformance with this Declaration and the Bylaws, which are to be shared equally (except as otherwise expressly provided herein) by all Town home Owners including, but not limited to, real estate taxes, if any, levied against the Common Area.

(g) "Declaration" means this instrument, as amended from time to time, by which the Development is submitted to the provisions hereof, as hereinafter provided.

(h) "Development" means (i) all the land, property and space comprising the Property and all improvements and structures now or hereafter erected, constructed or contained thereon or therein, (ii) all easements, rights and appurtenances now or hereafter belonging to the Property, (iii) and all furniture, furnishings, fixtures, facilities and equipment now or hereafter located on the Property which are intended for the mutual use, benefit or enjoyment of all Town home Owners.

(i) "Director" means a director on the Board.

(j) "Party Wall" means any wall which is built as part of the original construction of two self-contained dwelling structures and placed on the dividing line between such structures.

(k) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(l) "Property" means real estate described in Exhibit "A".

(m) "Town home" means collectively (i) a self-contained dwelling structure located in the Development, intended for use exclusively as living quarters for a single family, (ii) the individual parcel of land, that is conveyed to the Town home Owner in connection with the sale of such self-contained dwelling structure to said Town home Owner, (including, but not limited to, the patio and/or deck for such dwelling comprising a part of such parcel), and (iii) all appurtenances to such self-contained dwelling structure and individual parcel of land, including, but not limited to, any interest in the Common Area appurtenant, pertaining or corresponding to such self-contained dwelling structure and individual parcel of land.

(n) "Town home Owner" means the Person or Persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Town home. Unless specifically provided otherwise herein, the Declarant shall be deemed to be a Town home Owner with respect to any Town home to which the Declarant holds title.

(o) "Town home Owner's Share" means 100% divided by the total number of townhomes in the Development conveyed by Declarant.

2. SUBMISSION OF PROPERTY TO THIS DECLARATION. The Declarant, as the owner of the Property declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the terms of this Declaration.

3. LEGAL DESCRIPTION OF TOWNHOMES.

(i) No Town home Owner shall, by deed, plat, court decree or otherwise, subdivide or in any manner cause his Town home to be separated into any tracts, parcels or interests different from the whole Town home as described herein.

4. ASSOCIATION AND BYLAWS. These shall be formed pursuant to the Articles of Incorporation of the Association, which Association shall be the governing body for all Town home Owners and the Development, for the purposes of maintenance, repair, replacement, administration and operation of the Development, as provided in this Declaration. The management and operation of the Association shall be in the manner specified in the Bylaws and in various other paragraphs of this Declaration.

5. OWNERSHIP OF THE COMMON AREA. Fee title to the Common Area shall be held by the Association and as soon after with the recording of this Declaration as the Association has been incorporated, Declarant shall convey to the Association by quit claim deed said title to the Common Area resulting there from. All and whatever interest each of the Town home Owners has in the Common Area corresponding to each of the respective Town homes, as herein elsewhere described, shall be deemed conveyed together with that Town home, even though the legal description in the instrument conveying said Town home refers only to the fee title to that Town home and not specifically to the interest in the Common Area corresponding to said Town home.

6. USE OF THE COMMON AREA AND CERTAIN EASEMENTS.

(a) Each Town home Owner shall have the right to use the Common Area in common with all other Town home Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Town home owned by such Town home Owner, subject to the easements described in paragraphs 6(b) and 6(c) hereof. Said rights to use the Common Area shall extend not only to each Town home Owner but also to his agents, servants, family members, invitees and guests. Said rights to use the Common Area shall be subject to and governed by the provisions of this Declaration and the Bylaws and the rules and regulations adopted by the Association or the Board. In addition, the Association, and the Board acting on behalf of the Association, shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Area, subject to the provisions of this Declaration and the Bylaws. All revenues derived by the Association from such easements, leases or concessions or from other sources shall be held by the Association and used for the sole benefit of the Town home Owners, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

(b) The Common Area shall be subject to a blanket easement in favor of the Declarant, and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purposes of (i) access and ingress to and egress from said Common Area, (ii) construction, installation, repair, replacement and restoration of utilities, streets, roads, buildings, landscaping and any other improvements on the Property, (iii) tapping into and using sewer and water lines and other utility facilities and lines on or adjacent to the Property, and (iv) any other development of said Property permitted hereunder. The Declarant shall restore or repair any damage caused by its exercise of the foregoing blanket easement.

(c) The Common Area and the individual parcels of land described in clause (ii) of paragraph 1(n) shall be subject to a blanket easement in favor of the Association, and individual easements in favor of Ameritech Corporation, Commonwealth Edison Company, People's Gas Company, CATV licensee, and all other public or private utilities serving the Development, granting the Association and such utilities the right to install, lay, construct, renew, operate and maintain, repair and replace conduits, cables, pipes, sewer and water lines, electrical wiring, transformers and switching apparatus and other equipment including housings for such equipment, into, over, under, along, and through said Common Area and the aforesaid individual parcels of land (not, however, through any individual self-contained dwelling structure described in clause (i) of paragraph 1(n) other than an exterior wall whose interior surface will be unaffected thereby) for the purpose of providing utility and other services contemplated herein to the Property, or any parts thereof, together with reasonable rights of ingress to and egress from the Property, for such purposes. The Association, and the Board acting on behalf of the Association, may hereafter grant other or additional easements for utility purposes for the benefit of the Property over, under, along, and on any portion of said Common Area and individual parcels of land, not, however, through any self-contained dwelling structure described in clause (i) of paragraph 1(n), except as aforesaid, and each Townhome Owner hereby grants the Association, and the Board acting on behalf of the Association, an irrevocable power of attorney to execute, acknowledge, and record in the name of such Town home Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

(d) To comply with the exiting requirements of the City of Chicago a mutual easement is hereby granted in favor of each lot granting each other the right of pedestrian egress from one lot to another lot across the rooftop in the event of an emergency incident involving the risk of injury or death. This right is strictly limited to emergency circumstances only.

7. PARTY WALLS. To the extent not inconsistent with the provisions of this Section 7, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply to all Party Walls. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Town home Owners who make use of the Party Wall in proportion to such use. If a Party Wall is destroyed or damaged by fire or other casualty, any Town home Owner who has used the Party Wall may restore it, and if the other Town home Owner thereafter makes use of the Party Wall, the other Town home Owner shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of the Town home Owner who restores such Party Wall to call for a larger contribution from the other Town home Owner under any rule of law regarding liability for negligent or willful acts or omissions. Any Town home Owner who, by his negligent or willful act, causes any Party Wall to be exposed to the elements, shall bear the entire cost of repair and restoration and of furnishing the necessary protection against such elements. The right of any Town home Owner to contribution from any other Town home Owner under this Section 7 shall be appurtenant to and run with the Town home owned by the Town home Owner entitled to contribution and shall pass to the successors in title of such Town home Owner entitled to such contribution. Any dispute arising concerning a Party Wall, or arising under the provisions of this Section 7, shall be resolved by the Board, whose resolution shall be final and binding on the parties to such dispute.

8. PRIVATE STREETS. Any private street or streets in the Development shall be part of the Common Area and may be used for those purposes, determined by and subject to reasonable rules and regulations adopted by the Board or Association. The cost of maintenance and upkeep of such private street or streets shall be a Common Expense. If the Association so elects, a two-thirds majority of the Town home Owners at a meeting of Owners duly called for such purpose may elect to dedicate a portion of the common elements to a public body for use as, or in connection with, a street or utility.

9. LIEN FOR COMMON EXPENSES AND OTHER CHARGES. Each Town home Owner shall be responsible for and shall pay the assessments applicable to his Town home for Common Expenses as determined and assessed by the Board pursuant to and in accordance with this Declaration or the Bylaws. If any Town home Owner shall fail or refuse to make any such payment when due, the amount thereof, together with interest thereon at the highest lawful rate permitted under the laws of the State of Illinois, or eighteen (18%) percent per annum, whichever is less, shall (in addition to being the personal obligation of such Town home Owner) constitute a continuing lien on such Town home Owner's Town home; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage against such Town home, except for the amount of such Town home Owner's Share of the Common Expenses, together with interest thereon as hereinabove provided, which becomes due and payable from and after the date on which the mortgagee under said first mortgage either takes possession of the Town home or accepts a conveyance thereof, or the date on which said mortgagee under said first mortgage causes a receiver to be appointed for such Town home.

Notwithstanding the provisions of the above paragraph, the purchaser of a Town home at a judicial foreclosure sale, or a mortgagee who receives title to a town home by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the Town home's proportionate share of the common expenses for the Town home assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order.

10. MORTGAGES. Each Town home Owner shall have the right, subject to the provisions hereof, to make separate mortgages (including, without limitation, purchase money mortgages), deeds of trust (equivalent to mortgages), or other equivalent security interests for his Town home with banks, insurance companies, savings and loan associations, mortgage bankers or other bona fide lenders. The Town home Owner shall not have the right or authority to make or create, or cause to be made or created, any mortgage or other lien on or affecting the Development other than his Town home.

11. SEPARATE REAL ESTATE TAXES. Real estate taxes shall be separately taxed to each Town home. In the event that such taxes for any year are not separately billed for each Town home, but rather, a bill includes more than one Town home, or a Town home and a portion of the Common Area, each Town home Owner whose Town home is included in a collective bill shall pay an equitable share of that bill as reasonably determined by the Declarant in a manner, however, which recognizes and accounts for differences in assessments depending on whether real estate is deemed by the Assessor to be unimproved, partially improved, or fully improved in relation to when a Town home is first sold. Real estate taxes, if any, levied against the Common Area, as a parcel or parcels separate and apart from the Town homes (as distinguished from and not including real estate taxes levied against the Town homes which reflect the value to the Town homes of the Common Area) shall be a Common Expense payable by the Association. Real estate taxes levied against the Common Area for the year in which such Common Area is established, pursuant to the recordation of the Declaration shall be equitably prorated between Declarant and the Association.

12. INSURANCE.

(a) The Board shall have authority to, and shall obtain comprehensive public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area, and such other liability insurance as it deems desirable in amounts deemed sufficient in the judgment of the Board and other insurance as the Board deems necessary. The premiums for all said insurance specified in this paragraph 12(a) shall be a Common Expense. The Board shall retain in safe-keeping any insurance policy obtained as herein specified for as long as the issuer thereof has potential for liability thereunder.

(b) The Board shall also have the authority, and may, if the Board deems it in the best interest of at least a majority of the Town home Owners, obtain a master insurance policy for the Development, providing (in addition to one or more of the coverages specified in paragraph 12(a) hereof) all risk replacement cost insurance for all of the Town homes, including, but not limited to, those additions and improvements to a Town home of which the Town home Owner responsible therefore has given the Board and the insurance carrier written notice (but excluding all personal property located in a Town home). If the Board elects to obtain the aforesaid master insurance policy, the insurance policy shall name the Association and each Town home Owner and his mortgagee, if any, as insureds, and shall contain, if obtainable, a waiver of subrogation rights by the issuer as described in paragraph 12(a) hereof. If the Board obtains such a master insurance policy, the premiums therefore, to the extent they pertain to the all risk replacement cost insurance for the Town homes shall not be a Common Expense, and each Town home Owners shall pay his proportionate share thereof based upon the ratio between the area of his Town home and the aggregate area of all Town homes in the Development plus the added cost, if any, for additional improvements made by such Town home Owner, as aforesaid (excluding all personal property located in such Town homes). If the Board obtains such a master insurance policy, no Town home Owner shall take out separate insurance concurrent in form or contributing in the event of loss with the coverage provided in said master policy unless the Association is included as an insured thereunder, as its interests may appear.

(c) If the Board has not purchased the aforesaid master insurance policy, each Town home Owner shall, at his own expense, obtain, and maintain throughout the period of his ownership of a Town home, all risk replacement cost insurance on his Town home including without limitation, any and all additions and improvements thereto, and insurance against such other hazards as the Board may provide by resolution, such insurance coverage to be in form, substance, amount and with an insurance carrier satisfactory to the Board. Such insurance coverage shall name the Association as an additional insured thereunder as the Association's interest may appear. Each such policy of insurance shall contain, if obtainable, a waiver of subrogation rights by the insurer as described in paragraph 12(a) hereof. Each Town home Owner shall submit to the Association a certificate of insurance naming the Association as an additional insured thereunder. The proceeds of such insurance shall be payable to the Town home Owner and the Association as their interests may appear and shall be used to restore such Town home to the same condition in which it existed prior to such damage or destruction, and the Association shall have the right to compel the Town home Owner (or the holder of such proceeds, if other than said Town home Owner) to so apply such proceeds. Subject to the rights of any mortgagee under a recorded first mortgage on such Town home, the Association shall have the right, at its election, to collect and receive for any such insurance proceeds. In the event a Town home Owner desires to insure against his personal liability above and beyond the extent that his personal liability is covered by the insurance pertaining to the Common Area obtained by the Board, as provided above, said Town home Owner may, at his sole option, obtain such additional insurance at his sole expense.

13. DAMAGE OR DESTRUCTION. In the event of a fire or any other disaster causing loss, or destruction to or of, any Town home or any portion thereof, the Town home Owner of any such Town

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home covenants and agrees that such Town home Owner shall complete reconstruction within a reasonable time (not to exceed six months subject to delays over which the Town home Owner had no reasonable control) after such loss, damage or destruction, in a substantial and workmanlike manner with materials equal to or better than those used in the original structure, and that all construction performed by or caused to be performed by such Town home Owner shall conform in all respects to the laws and ordinances regulating the construction of buildings in force at the time of such reconstruction.

All available insurance proceeds shall be applied to such reconstruction, with the excess, if any, to be paid to the Town home Owner. The exterior of such Town home, when rebuilt, shall be substantially identical to, and of architectural design in conformity with, the exterior of such Town home prior to the loss, damage or destruction. In the event of the total or substantial destruction of all of the Town homes in the Development, the architectural design of the exterior of the Town homes to be rebuilt and the materials to be used in constructing the same shall be agreed upon by seventy-five (75%) percent of the Town home Owners and the Association, and in the absence of such agreement, the rebuilt Town homes shall be substantially identical in architectural design to the original Town homes prior to the loss, damage or destruction and shall be constructed of materials equal to or better than the original materials used. All reconstruction performed pursuant to the provisions of this Section shall be subject to the approval of the Association. In the event that any Town home Owner shall fail to perform the necessary reconstruction in accordance with the provisions hereof, then the Association may, but shall not be required to, cause such reconstruction to be furnished, provided and installed in accordance with the provisions hereof and the total cost thereof shall be paid by the Town home Owner. In any such event, the Association shall have, and is hereby given a continuing lien on the Town home to which any such reconstruction is furnished by the Association in the aggregate amount of (i) the cost thereof, (ii) interest at the maximum rate permitted by the laws of Illinois, or eighteen (18%) percent per annum, which ever is less, from the date of the Association's payment of such costs, and (iii) reasonable attorney's fees and any court or other costs incurred by the Association in connection therewith, which lien shall bind such Town home in the hands of such Town home Owner, his heirs, devisees, personal representatives, grantees and assignees. In the event such Town home Owner does not forthwith fully repay the Association therefore, as aforesaid, such lien may be foreclosed against the Town home by the Association, in the same manner as provided in connection with unpaid assessments. The Association's lien described in this Section shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Town home.

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14. MAINTENANCE, REPAIRS AND REPLACEMENTS.

(a) Except as provided in the following paragraph 14(b), each Town home Owner at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements outside and within his own Town home. If due to the act or neglect of a Town home Owner, or of his agent, servant, family member, guest, invitee, licensee or household pet, damage shall be caused to the Common Area or to a Town home not owned by said Town home Owner, or, maintenance, repairs, or replacements are required which would otherwise be a Common Expense, then such Town home Owner shall pay for such damage or such maintenance, repairs and replacements as may be determined by the Association, to the extent not covered by insurance (including the amount of any applicable deductible).

The authorized representatives of the Association, Board or Managing Agent, if any, with the approval of the Association, shall be entitled to reasonable access to any of the Town homes as may be required in connection with maintenance, of, repairs to, or replacement of the Common Area, or any equipment, facilities or fixtures affecting or serving any other Town home or Common Area.

(b) In addition to maintenance and repair of the Common Area, the Association shall be responsible for and shall have the right to:

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(i) Provide landscaping and planting and maintenance of all trees, shrubs, and ground cover in the Development, including private yards, as well as public parkways adjacent to the Development. This shall not preclude landscape work by an individual Town home Owner in such Town home Owner's private yard in keeping with standards set by the Board from time to time.

(ii) Provide maintenance of the private streets in and around all or portions of the Development.

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(iii) Provide for snow removal of the private streets in the Development.

The cost of the foregoing items of landscaping, maintenance and repair shall be a Common Expense, except as hereinafter provided. The cost of any exterior maintenance which the Association is not otherwise required to furnish but which is furnished at the request of any Town home Owner, or any maintenance which has been made necessary by reason of the willful or negligent act or omission of any Town home Owner or of his agent, servant, family member, guest, invitee, licensee, or household pet, the expense of which is not reimbursed by the proceeds of any insurance (including the amount of any applicable deductible), shall be assessed only against that Town home Owner requesting or charged with necessitating such maintenance and shall be payable in the calendar month assessed, and shall be subject to the same lien in the event of nonpayment, as such Town home Owner's Share of Common Expenses. For the purposes of performing the exterior maintenance required or authorized by this paragraph, the Association through its duly authorized agents or employees, shall have the right to enter upon any Town home during any reasonable hours on any day, after giving reasonable written notice to the Town home Owner.

(c) If the Association furnishes maintenance with respect to a Town home at the request of a Town home Owner other than as required by this Declaration, which the Association may elect to do, but shall have no obligation to do, the Association may require such Town home Owner to pay the cost thereof in advance.

15. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. No alteration of any portion of the Common Area or any Town home, or any additions or improvements thereto shall be made by a Town home Owner without the prior written approval of all Directors on the Board or a majority of Town home Owners, except for interior improvements not visible outside the Town home and not affecting the structural integrity of the Town home or the building of which the Town home is a part. Without limiting the generality of the foregoing, this restriction applies to the erection of any structure, shed, gazebo, screen enclosure, basketball goal or swimming pool.

The Town home Owner shall promptly report the value of any exterior improvements to the applicable insurance carrier and the Board and shall give the Board fifteen days prior written notice before commencement of any work thereon. The Board may authorize alterations of, additions to and improvements to any portion of the Common Area, as provided in the Bylaws and charge the cost thereof as a Common Expense. Any Town home Owner making alterations, additions or improvements to his Town home shall be responsible for any damage to any other Town homes, the Common Area, the Development, or any part thereof, resulting from such alterations, additions or improvements.

16. DECORATING AND MAINTENANCE OF TOWNHOME. Each Town home Owner, at his own expense, shall furnish and be responsible for all maintenance and decorating outside and within his own Town home as may be required from time to time to keep it in good condition. Replacement or repair of exterior doors, garage doors, windows, window frames, masonry, roofing, exterior fixtures, exterior hardware, and fencing shall be strictly in accordance with specifications set by the Board to assure uniformity of design and appearance.

17. ENCROACHMENTS. If any portions of the Common Area shall encroach upon any Town home, or if any Town home shall encroach upon any portions of the Common Area or any other Town home, as the Common Area and Town homes are shown in the Assessment Plat, there shall be deemed to be a mutual easement in favor of the owners of the Common Areas and the respective Town home Owners involved, to the extent of such encroachments, so long as the same shall exist.

18. TRANSFER OF A TOWNHOME.

(a) A Town home Owner may, without restriction under this Declaration, sell, or otherwise transfer his Town home subject only to the limitations and requirements for leasing set forth below. Notice of any such unrestricted transfer shall be given to the Board within five days following consummation of such transfer.

(b) A Town home Owner may lease his Town home provided that the following limitations and requirements are complied with:

(i) The Town home Owner shall deliver a copy of the signed lease to the Board prior to occupancy by any tenant.

(ii) No lease shall be for a stated term of less than six (6) months. The Lease shall contain the statement "Tenant agrees to be bound by the Declaration of Covenants, Conditions, Easements and Restrictions for the Atrium Homes Town homes and any rules and regulations promulgated by the Board. Tenant agrees that the Board shall have the right to proceed directly against Tenant at law or in equity or under the provisions of Articles IX of the Code of Civil Procedure for any breach by Tenant of any rules, regulations, covenants, restrictions or Bylaws".

(iii) No lease shall in any way relieve or discharge the Town home Owner from his obligations hereunder, who shall, at all times during any lease, remain fully responsible for the performance thereof.

19. USE AND OCCUPANCY RESTRICTIONS.

(a) No part of the Development shall be used for other than housing and the related purposes for which the Development was designed. Each Town home shall be used only as a residence for a single family. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Town home Owner from maintaining his personal professional library, keeping his personal business or professional or professional records or accounts, or handling his personal business or professional telephone calls or correspondence within his Town home. The uses set forth in the preceding sentence are expressly declared customarily incidental to the principal residential use of a Town home and not in violation of the restriction on use contained herein.

(b) The Common Area shall be used only by the Town home Owners and their agents, servants, family members, guests and invitees for access, ingress to and egress from their respective Town homes and for purposes incidental to the residential use of the Town home. The uses, maintenance and operation of the Common Area shall not be obstructed, damaged, or unreasonably interfered with by any Town home Owner, and shall be subject to any lease, concession or easement now or hereafter in existence affecting any part or all of said Common Area.

(c) No unlawful, noxious or offensive activities shall be conducted in or upon, or suffered to be conducted in or upon any Town home or the Development nor shall anything be done therein or

thereon which, in the judgment of the Board, shall constitute a nuisance or cause unreasonable noise or disturbance to others.

(d) No facilities, including poles and wires for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any individual parcel of land constituting part of a Town home, and no external outside antennas or wires of any kind shall be permitted or maintained except dish antennas located below and within the roof parpets and wired through the roof. The preceding sentence shall not preclude the installation of above ground transformers, pedestals, meter panels or other appurtenances which may be required as normal to the installation of underground gas, telephone, electricity and water transmission systems, street lighting, installed by Declarant or public utility companies in easements reserved for such purposes.

(e) Except for private passenger motor vehicles, motorcycles, and mopeds, no motor vehicles or trailers shall be stored in or upon any Town home without the written consent of the Board. Passenger motor vehicles, motorcycles and mopeds shall be parked only in garages.

(f) No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any individual parcel of land constituting part of a Town home, except building materials during the course of construction of any approved structure. Trash, garbage, and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations of the Board. Such containers may be placed in the open, on the day that a pick-up is to be made in such a place as to provide access to persons making such pick-up. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Board, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of trash, garbage and other waste containers permitted and the manner of storage of the same in the Development. The cost of purchase, repair and replacement of such containers shall be at Town home Owner expense.

(g) No water pipes, sewer pipes or drainage pipes shall be installed or maintained in or on any Town home above the surface of the ground, except hoses used for irrigation purposes. No Town home shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(h) No animals shall be raised, bred or kept in any Town home or the Common Area, except not more than two (2) dogs per Town home, cats, and small birds, fish and other pets commonly kept as household pets, provided: i) such pets are not kept or bred for any commercial purpose; ii) such pets are kept on a leash or in a cage when in the Common Area; iii) such pets shall be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the board (which rules and regulations may limit the number and sizes of household pets which may be kept in a Town home); and iv) such pets shall not, in the judgment of the Board, constitute a nuisance to others. No animal waste shall be left in the Common Area and no animal waste shall be permitted to accumulate anywhere outside of a Town home. The Board shall have the right to require removal within ten (10) days of any pet which constitutes a nuisance.

(i) No sign or other advertising device of any nature shall be placed upon any Town home or in any window or glass door without the consent of the Board except as provided otherwise herein. Notwithstanding the foregoing, a family or professional name plate, a name and address plate, or an address plate on the first floor of the Town home, none of which shall exceed four (4) square inches in area (except with the written consent of the Board) may be displayed. The Declarant, however, reserves the right to erect such signs as it may deem necessary in or on the Development, whose size

and design shall not be subject to the foregoing restrictions, until all the Town homes in the Development are sold and deeds delivered therefore.

(j) No Town home Owner shall display, hang or store any clothing, sheets, blankets, laundry or other articles outside his Town home or which may be visible from the outside of this Town home (other than draperies, curtains, or shades of neutral nature and appearance, subject to the rules and regulations of the Board) or paint, decorate, or adorn the outside of his Town home or install outside his Town home any canopy or awning, or other equipment, fixtures or items of any kind, without the prior written permission of the Board.

(k) No machinery or power driven vehicles shall be placed or operated upon any Town home or any portion of the Common Area, except such machinery as is usual in maintenance of a private residence and except private passenger automobiles, motorcycles and mopeds. No Town home Owner shall operate any machines, appliances, accessories, or equipment in such a manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

(l) No person shall obstruct, alter or in any manner modify the established drainage pattern from, on or over any Town home or any portion of the Common Area. The Declarant reserves the right for itself and the Association to enter upon any Town home and the Common Area to correct, as it may deem necessary, any drainage condition.

(m) No plant, hedge, shrub or flowers planted by a Town home Owner shall be allowed to grow in a manner which, in the judgment of the Board, materially detracts from the overall landscaping of the Development.

(n) Each Town home Owner shall maintain his Town home in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Town home or the Common Area which may increase the cost or cause the cancellation of insurance on other Town homes or on the Common Area or materially increase the cost of or make it impossible for the Association to provide the matters specified in paragraph 14(b).

(o) Articles of personal property belonging to any Town home Owner, such as baby carriages, camping vehicles, trailers, boats, snowmobiles, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept on or in any portion of the Common Area, except as specifically designated by the Board.

(p) No Town home Owner shall overload the electrical wiring in his Town home or operate any machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

(q) The Association reserves the right to enter upon any Town home to correct or eliminate nuisances or violations of any or all of the foregoing. The cost of the same shall be assessed by the Association against the individual Town home Owner causing the nuisance or violation, and such assessment shall be due and payable in the calendar month assessed. In the event payment of such assessment is not made when due, such assessment shall become a lien on the property, the personal obligation of the Town home Owner, and subject to all of the remedies contained in this Declaration.

20. REMEDIES.

(a) In the event of any default by any Town home Owner under the provisions of this Declaration, the Bylaws, or the rules and regulations of the Board or Association, the Association and its

successors or assigns, or the Board or its agents, shall have the right to levy a fine against the defaulting Town home Owner in an amount reasonably determined by the Board, after notice and an opportunity to be heard, and in addition shall have all of the rights and remedies which may be provided for in this Declaration, the Bylaws, the Illinois Forcible Entry and Detainer Act, or the aforesaid rules and regulations, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Town home Owner and/or others (i) for enforcement of foreclosure of any lien and the appointment of a receiver for the Town home, without notice and without regard to the value of such Town home or ownership interest or the solvency of such Town home Owner, or (ii) for damages, injunction or specific performance, or for judgment for payment of money and collection thereof, or for the right to take possession of and sell the Town home, at a judicial sale, or (iii) for any combination of the above remedies, or (iv) for any other relief now or hereafter permitted. All expenses of the Association in connection with any actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate permitted under the laws of the State of Illinois, or eighteen (18%) percent per annum whichever is less, until paid, shall be charged to and assessed against such defaulting Town home Owner, and shall be added to and deemed part of his share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for nonpayment of his share of the Common Expenses, upon the Town home of such defaulting Town home Owner and upon all of his additions and improvements thereto, and upon all of his personal property located in his Town home or elsewhere on the Development; provided, however, that such lien shall be subordinate to the lien of a prior recorded mortgage or mortgages on the Town home of such Town home Owner, except for the amount of the proportionate share of Common Expenses which becomes due and payable from and after the date on which the mortgage owner or holder either takes possession of the Town home or accepts a conveyance of any interest therein or the date on which any mortgagee causes a receiver to be appointed for the Town home.

(b) In the event of any such default by any Town home Owner, the Association, the Board and the Managing Agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Town home Owner, with interest at the rate aforesaid. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board. The provisions of this Section 20 applicable to the priority of liens held by mortgagees shall not be amended, modified or rescinded without the express and prior written consent of all mortgagees of record.

(c) The proceeds of any judicial sale of a Town home pursuant to this Section 20 shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Town home Owner in any final judgment. Any balance of such proceeds remaining after satisfaction of said costs, charges, fees and expenses and any unpaid assessments hereunder and liens shall be paid to the Town home Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Town home and to immediate possession of the Town home sold, and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the Town home sold subject to this Declaration, the Bylaws and the rules and regulations of the Board or Association.

21. AMENDMENTS.

(a) In addition to amendments of this Declaration and Bylaws as heretofore provided, subject to the following paragraph, and unless otherwise provided herein, this Declaration may be

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changed, modified, or amended by an instrument in writing, setting forth such change, modification or amendment, signed by seventy-five (75%) percent of the Town home Owners.

(b) Neither this Declaration nor the Bylaws may be changed, modified, or amended so as to eliminate, impair, limit or abridge any rights therein of the Declarant or of the holder of any mortgage of record of any Town home, without the prior written consent of the Declarant or the holder of any such mortgage of record, as the case may be.

(c) Any change in or modification or amendment of this Declaration, whether accomplished under the provisions of this Section 21 or another paragraph of this Declaration, shall be effective upon recording of the instrument which accomplishes such change, modification or amendment.

22. NOTICES.

(a) Notices provided for in this Declaration or the Bylaws shall be in writing. Such notices shall be addressed to the Association or Board as follows:

if the President of the Board is not a Town home Owner, then:

Fillmore Development, L.L.C.
357 West Chicago Avenue, #200
Chicago, IL 60610;

00467450

if the President of the Board is a Town home Owner, then:

c/o President of the Board of the 1400 Fillmore Town home Association
addressed to his Town home;

or at such other address as hereinafter provided. Such notices shall be addressed to any Town home Owner, as the case may be, at his Town home or at such other address as hereinafter provided by such Town home Owner in writing. Such notices shall be addressed to any mortgagee of a Town home, as the case may be, at the address provided to the Association by such mortgagee for that purpose, or at such other address as hereinafter provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Town home Owners. Any Town home Owner or mortgagee of a Town home may designate a different address for notices to them by giving written notice to the Association. Notices required to be delivered to any devisee or recipient of a Town home from, or personal representative of, a deceased Town home Owner shall be addressed to such party at the address appearing for said party in the records of the court where the estate of such deceased Town home Owner is being administered. Notices addressed as above provided shall be deemed delivered when sent and shall either be mailed by United States registered or certified mail, or delivered in person, with written acknowledgement of the receipt thereof.

(b) Upon written request to the Board, the holder of any recorded mortgage encumbering any Town home shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of the Town home which is subject to such mortgage.

23. RIGHTS RESERVED TO DECLARANT DURING SALE OF TOWNHOMES. During the period of sale by the Declarant of any Town home on the Property, the Declarant and the Declarant's agents, employees, contractors and subcontractors, and their respective agent, employees, successors and assigns, shall be entitled to access, ingress to and egress from the Development as may be reasonably required for purposes of such sale. While the Declarant owns any Town home and until

every Town home in the Development is sold and occupied by the purchasers thereof, the Declarant, and the Declarant's agents and employees, and their respective agents, employees, successors and assigns, may use and show one or more of such unsold or unoccupied Town homes as a model Town home or Town homes and may use one or more of such unsold or unoccupied Town homes as a sales office or sales offices, and may maintain customary signs, banners and lighting in connection therewith.

24. SEVERABILITY. Declarant intends and believes that each provision in this Declaration and the Bylaws is in accordance with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Declaration or the Bylaws is found by a court of law to be in violation of any local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Declaration or the Bylaws to be illegal, invalid, unlawful, void, or unenforceable as written, then it is Declarant's intent that such portion, provision or provisions shall be given force to the fullest extent that they are legal, valid and enforceable; that the remainder of this Declaration and the Bylaws shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provisions or provisions were not contained therein; and that the rights, obligations and interests arising under the remainder of this Declaration and the Bylaws shall continue in full force and effect.

25. PERPETUITIES AND RESTRAINTS ON ALIENATION. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one years after the death of the survivor of the descendants of William J. Clinton, the President of the United States on the date hereof, and James Edgar, the Governor of Illinois on the date hereof, who are living on the date hereof.

26. RIGHTS AND OBLIGATIONS. Each grantee of the Declarant, by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts said deed or contract subject to all restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All covenants, conditions, restrictions, easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations imposed hereby shall be deemed and taken to be appurtenant to and covenants running with the Town home, and shall bind any person having at any time any interest or estate in the Town home, and shall inure to the benefit of and bind any grantee or purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

27. SUCCESSORS AND ASSIGNS OF DECLARANT. Every right, power or easement granted to or reserved by the Declarant in this Declaration, the Bylaws or in the rules and regulations of the Board or Association, shall inure to the benefit of and may be exercised by the Declarant's successors and assigns to whom the Declarant expressly assigns the rights of the Declarant hereunder.

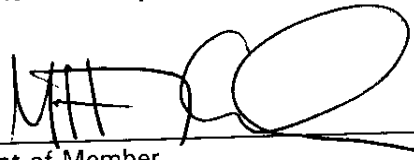
28. LAND TRUSTEE AS TOWNHOME OWNER. In the event title to any Town home is conveyed to a land trust holding title under the terms of which all powers of management, operation and control of the Town home remains vested in the trust beneficiaries, then the beneficiaries thereunder shall be considered Town home Owners for all purposes hereunder and they shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Town home. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of any such lien or obligation shall continue to be a charge or lien upon the Town home and the beneficiaries of such trust, notwithstanding any transfers of

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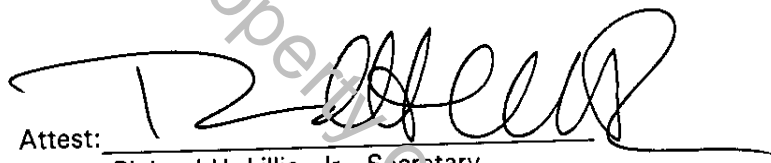
the beneficial interest of any such trust or any transfer of title to such Town home. By directing said trustee to take title to such Town home said beneficiaries agree to be bound by the provisions of this Section 28.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of this 15th day of JUNE, 2000.

By: Fillmore Development, L.L.C.



President of Member


Attest: _____
Richard H. Lillie, Jr., Secretary

Prepared by and to be mailed to:

Richard H. Lillie, Jr.
Fillmore Development, L.L.C.
357 West Chicago Avenue, #200
Chicago, IL 60610

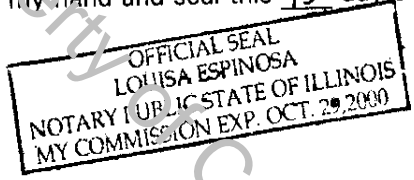
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Louisa Espinosa, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that GEORGE THUSIA and RICHARD H. LULIE, JR., of Fillmore Development, L.L.C., personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such GEORGE THUSIA and RICHARD H. LULIE, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this 15th day of JUNE, 2000. **00467450**



[Signature]
Notary Public

My commission expires: 10/29/00

Cook County Clerk's Office


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CONSENT OF MORTGAGEE

OLD KENT BANK, holder of a Mortgage on the Property legally described on Exhibit A attached hereto, hereby consents to the execution and recording of the within Declaration of Condominium Ownership and agrees that said Mortgage is subject thereto and to the provisions of the Condominium Property Act of the State of Illinois.

IN WITNESS WHEREOF, OLD KENT BANK has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf, all done at Elmhurst, Illinois on this Twenty-seventh day of September, 1999.

By:



Gary A. Pleickhardt
Its Vice President

00467450

Property of Cook County Clerk's Office

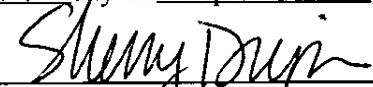
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STATE OF ILLINOIS)

COUNTY OF Kane)

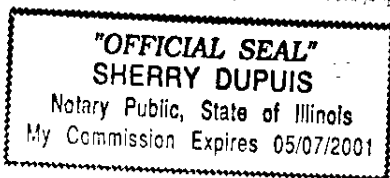
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Gary A. Pleickhardt the Vice President of OLD KENT BANK, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that He signed and delivered the said instrument as His own free and voluntary act, and as the free and voluntary act of said Trust for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 27th day of September, 1999.



Notary Public

My Commission Expires:



00467450

Notary of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 35, 36 37, 38, 39 AND 40 IN THOMAS STINSON'S SUBDIVISION OF BLOCK 48 OF CANAL TRUSTEE'S SUBDIVISION OF THE WEST HALF AND THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: ~~17-17-325-003, 034 and 035~~

17-17-325-038

17-17-325-039

17-17-325-040

17-17-325-041

17-17-325-042

17-17-325-043

17-17-325-044

17-17-325-045

17-17-325-046

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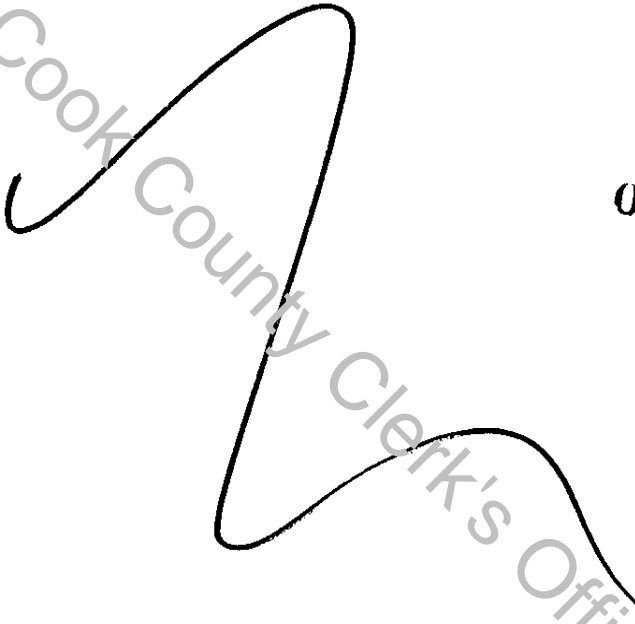
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EXHIBIT B

ARTICLES OF INCORPORATION

Property of Cook County Clerk's Office

A large, stylized handwritten signature in black ink is written over the diagonal watermark text.

00467450

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NFP-102.10
(Rev. Jan. 1999)

ARTICLES OF INCORPORATION

(Do Not Write in This Space)

http://www.sos.state.il.us

SUBMIT IN DUPLICATE

Payment must be made by certified check, cashier's check, Illinois attorney's check, Illinois C.P.A.'s check or money order, payable to "Secretary of State."

DO NOT SEND CASH!

Date

Filing Fee \$50

Approved

TO: JESSE WHITE, Secretary of State

Pursuant to the provisions of "The General Not For Profit Corporation Act of 1986," the undersigned incorporator(s) hereby adopt the following Articles of Incorporation.

Article 1. The name of the corporation is: 1400 Fillmore Townhome Association

Article 2: The name and address of the initial registered agent and registered office are:

Registered Agent Richard H. Lillie, Jr.

First Name Middle Name Last Name

Registered Office 357 West Chicago Avenue

Number Street (Do not use P.O. Box)

Chicago, IL IL Cook

City ZIP Code County

Article 3: The first Board of Directors shall be 3 in number, their names and residential addresses being as follows: (Not less than three)

Director's Names	Number	Street	Address City	State
Richard H. Lillie, Jr.	357 W	Chicago Avenue,	Chicago, IL	60610
Gregory G. Teague	357 W.	Chicago Avenue,	Chicago, IL	60610
Elizabeth L. O'Louglin	357 W.	Chicago Avenue,	Chicago, IL	60610

Article 4. The purposes for which the corporation is organized are:

To maintain, operate and manage a townhome development located in Chicago, Cook County, Illinois.

00467450

Is this corporation a Condominium Association as established under the Condominium Property Act?
 Yes No (Check one)

Is this corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? Yes No (Check one)

Is this a Homeowner's Association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? Yes No

Article 5. Other provisions (please use separate page):

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Article 6.

NAMES & ADDRESSES OF INCORPORATORS

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated June 15, 2000
(Month & Day) (Year)

SIGNATURES AND NAMES	POST OFFICE ADDRESS
1. <u>[Signature]</u> Signature <u>Richard H. Lillie, Jr.</u> Name (please print)	<u>357 W. Chicago Avenue</u> Street <u>Chicago, IL 60610</u> City/Town State ZIP
2. _____ Signature _____ Name (please print)	2. _____ Street _____ City/Town State ZIP
3. _____ Signature _____ Name (please print)	3. _____ Street _____ City/Town State ZIP
4. _____ Signature _____ Name (please print)	4. _____ Street _____ City/Town State ZIP
5. _____ Signature _____ Name (please print)	5. _____ Street _____ City/Town State ZIP

(Signatures must be in **BLACK INK** on original document. Carbon copied, photocopied or rubber stamped signatures may only be used on the true copy.)

- If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by its President or Vice-President and verified by him, and attested by its Secretary or an Assistant Secretary.
- The registered agent cannot be the corporation itself.
- The registered agent may be an individual, resident in this State, or a domestic or foreign corporation, authorized to act as a registered agent.
- The registered office may be, but need not be, the same as its principal office.
- A corporation which is to function as a club, as defined in Section 1-3.24 of the "Liquor Control Act" of 1934, must insert in its purpose clause a statement that it will comply with the State and local laws and ordinances relating to alcoholic liquors.

FOR INSERTS - USE WHITE PAPER - SIZE 8 1/2 x 11

File No. _____

FORM NFP-102.10
ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT
CORPORATION ACT
of

00467450

SECRETARY OF STATE
DEPARTMENT OF BUSINESS SERVICES
CORPORATION DIVISION
SPRINGFIELD, ILLINOIS 62756
TELEPHONE (217) 782-9522
782-9523

(These Articles Must Be Executed and Filed
in Duplicate)

Filing Fee \$50
C-157.11

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EXHIBIT C

BYLAWS FOR 1400 FILLMORE TOWNHOME ASSOCIATION

00467450

1. Association. The Association has been or will be formed as a not-for-profit Illinois corporation under the General Not-For-Profit Corporation Act of the State of Illinois having the name "1400 FILLMORE TOWNHOME ASSOCIATION", and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the Development.

2. Membership. Every Town home Owner shall be known as a "Member" of the Association and such membership shall automatically terminate when he ceases to be a Town home Owner. Membership is appurtenant to and shall not be separated from ownership of a Town home. Each Town home Owner by acceptance of a deed or other conveyance of a Town home thereby becomes a Member, whether or not this declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. There shall be one person with respect to every Town home who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "Voting Member". Such Voting Member may be the Town home Owner or one of the group composed of all the Owners of a Town home or may be some person designated by such Town home Owner to act as proxy on his or her behalf and who need not be a Town home Owner. Such designation shall be made in writing and shall be revocable at any time by actual notice to the members of the Board by the Town home Owner.

3. Voting Rights. The Association shall have two classes of Voting Members:

Class A: Class A Members shall be all Town home Owners with the exception of the Declarant and each Class A Member shall be entitled to one vote for each Town home owned by him;

Class B: The Class B Member shall be the Declarant who shall at any given time be entitled to three (3) times the number of votes in which the Class A Members shall be entitled at such time. The Declarant shall cease to be a Class B Member and shall become a Class A Member upon the first to occur of any of the following dates:

- a) The date upon which the Declarant shall have sold and conveyed title to eleven (11) Town homes, or
- b) On June 1, 2003, or
- c) The date upon which the Declarant elects to convert its Class B Membership to Class A Membership by written notice of such election to the Association.

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4. Qualification of Board. For a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of the voting members, the Declarant shall have the right to designate and select the persons who shall serve as members of each Board or exercise the powers of the Board as provided herein. Except for directors so designated by the Declarant, each member of the Board shall be one of the Town home Owners and shall reside in a Town home; provided, however, that in the event a Town home Owner is a corporation, partnership, trust or other legal entity, its agent shall be eligible to serve as a member of the Board, so long as any such agents (other than a person designated by Declarant) resides in a Town home.

5. Election of Directors.

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(a) The initial Board of Directors designated by the Declarant shall consist of three (3) directors. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the Articles of Incorporation therefore in the office of the Secretary of State of Illinois and ending upon the qualification of the Directors elected at the initial meeting of the Voting Members held as provided in Section 6 hereof. At the initial meeting held as provided in Section 6 hereof, the Voting Members shall elect three (3) Board members who shall serve until the first annual meeting. In all elections for members of the Board, each Voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each Voting Member shall be entitled to cast the number of votes specified in Section 3 hereof. Members of the Board elected at the initial meeting of the Voting Members shall serve until the first annual meeting. At the first annual meeting, three (3) Board members shall be elected. The two (2) persons receiving the highest number of votes at the first annual meeting shall be elected to the board for a term of two (2) years and the one (1) person receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. The election and term of office for candidates who receive the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting, and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the term of the office of Board members at any annual or special meeting, provided that such number shall not be less than three (3) and that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Vacancies on the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by the majority vote of all remaining Board members. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum. Directors shall receive no compensation for their services as directors unless expressly provided for in resolutions adopted by the Town home Owners.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members and who shall be the chief

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executive officer of the Board and Association, a Secretary who shall keep minutes of all meetings, a Treasurer and such other officers as the Board shall see fit. Except for Directors designated by the Declarant any Board member may be removed from office by the affirmative vote of Voting Members holding two-thirds (2/3) of the total votes.

6. Meetings of Voting Members.

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(a) Meetings of the Voting Members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the Voting Members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the Voting Members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(b) The initial meeting of Voting Members shall be held upon not less than ten (10) days written notice from the Declarant. Such notice must be given no later than the earlier of (i) thirty (30) days after the sale and conveyance of title to seventy-five (75%) percent of the Town homes which may be constructed by Declarant on the Property, and (ii) June 1, 2003 but such notice may, at the discretion of the Declarant, be given earlier. Thereafter, there shall be an annual meeting of the Voting Members on or about the 1st of November following such initial meeting and at the same time thereafter in each succeeding year, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board.

(c) Special meetings of the Voting Members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the Voting Members holding one-fourth (1/4) of the total votes.

(d) Notices of meetings may be delivered personally or by mail to the Voting Members, addressed to each such Voting Member at the address given by him to the Board, or if no address shall be given, addressed to such Voting Member to the address of his Town home.

7. General Powers and Duties of the Board. The Board shall have the following powers and duties.

(a) To adopt rules and regulations governing the maintenance and administration of the Development for the health, comfort, safety and general welfare of the Town home Owners and occupants thereof.

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(b) To provide for maintenance, repair and replacement of the Common Areas pursuant to the Declaration and of the exterior of the Town homes pursuant to the Declaration.

(c) To enter into contracts on behalf of, and to purchase or procure in the name of, the Association any materials, supplies, insurance (including directors and officers liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of these Bylaws or by the Declaration of Townhomes, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of these Bylaws.

(d) To prepare, adopt, and distribute an annual budget for the property.

(e) To levy assessments.

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(f) To collect assessments.

(g) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Town home as may be required to exercise all of the rights and obligations granted to or imposed upon it pursuant to these Bylaws or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Town home Owner or occupant.

(h) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.

(i) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Town home Owners in proportionate amounts to cover the deficiency.

(j) To take such action as may be required to enforce the provisions of the Declaration and the rules and regulations made hereunder.

(k) To enter into a contract for the management of the Development with a professional manager or management company on such reasonable terms as the Board shall determine.

(l) To exercise any and all powers, rights and authorities provided in the Illinois General Not-For-Profit Corporation act, as amended from time to time.

8. Liability of the Board of Directors. Neither the members of the Board nor the officers of the Association shall be liable to the Town home Owners for any mistake of

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judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Town home Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Town home Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrarily to the provisions of these Bylaws. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officers; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer.

9. Books and Records. The books and records of the Association may be examined by any Town home Owner or any holder of a first mortgage on a Town home at the office where such books and records are maintained, during normal business hours for any proper purpose upon prior, written notice to the Board. Upon reasonable notice and payment of a reasonable fee, any Town home Owner shall be furnished with a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Town home Owner.

10. Assessments.

(a) Personal Obligation: Each Town home Owner (except for the Declarant) by acceptance of a deed for a Town home, whether or not it shall be so expressed in any such deed, or other conveyance for such Town home, hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of the Declaration and these Bylaws of the Association. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of eighteen (18%) percent per annum, late fees of \$25.00 per month (or such other amount as the Board shall from time to time determine) and costs of collection, including attorneys' fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Town home against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of the person who was the Owner of such Town home on the date upon which such assessment became due. Personal liability for

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such assessments shall not pass to a bona fide purchaser of a Town home unless expressly assumed by such purchaser. The Declarant, to the extent that it shall be a Town home Owner of a Town home which is leased to any person, shall, as to each such leased Town home, be subject to the provisions of this Article from and after the first day of the month in which the Declarant first receives rent for such Town home. Except as provided in the preceding sentence, the Declarant shall not be liable for the payment of assessments hereunder and portions of the Development owned by the Declarant shall not be subject to liens hereunder; provided, however, that the Declarant shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Development owned by the Declarant.

(b) Purpose of Assessments: The assessments and fees levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Town home Owners and, in particular, for (i) common expenses; (ii) maintenance and repair of Town home to the extent a Town home Owner has failed to do so (in which case said assessments or fees shall be levied entirely against the Town home upon which such repairs or maintenance were necessitated by the Owner's failure to do so); (iii) services that the Association may elect to provide; all including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits) and the materials in connection therewith; (iv) the establishment of such reasonable reserves, if any, as the Board deems appropriate, (v) the performance of the duties of the Board as set forth in these Bylaws and the Declaration of the Association, including the enforcement of the provisions thereof; and (vi) in general, carrying out the purposes of the Association as stated herein and in the Articles of Incorporation of the Association.

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(c) Annual Assessments: Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Association (which estimate shall include a reasonable amount considered by the Board to be desirable for contingencies) and shall notify each Town home Owner in writing as to the amount of the Aggregate Annual Assessment with a reasonable itemization thereof and of the amount thereof allocable to such Town home Owner. Each Town home Owner (with the exception of the Declarant except as otherwise hereunder provided) shall be allocated that portion of the Aggregate Annual Assessment as shall be determined by dividing the Aggregate Annual Assessment by the total number of Town homes in the Development. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Town home Owner, jointly and severally, shall be personally liable for and obligated to pay one twelfth (1/12) of the portion of the Aggregate Annual Assessment allocated to such Town home Owner. On or before April 1 of each calendar year following the initial meeting of Voting Members, the Board shall furnish each Town home Owner with an itemized accounting of the expenses for the preceding calendar year and the amounts collected from the Town home Owners. Any surplus may be applied to expenses or reserves for the subsequent calendar year, as the Board shall determine.

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(d) Special Assessments: In addition to the annual assessments authorized pursuant to paragraph 10(c), the Board may at any time or from time to time levy special assessments for repairs and replacement of existing facilities and improvements not provided for in the Aggregate Annual Assessment. Additionally, the Board may levy special assessments for additional improvements or additional facilities in amounts not exceeding \$5000 total in aggregate in any calendar year. Expenditures in excess of such limit for additional improvements or additional facilities shall be approved by a majority of the Voting Members cast at an annual or special meeting of the Town home Owners. Special assessments shall be allocated to each Town home Owner in the same manner as such Owner's respective share of the Aggregate Annual Assessment. The Declarant shall be liable for the payment of special assessments on only those Town homes for which the Declarant is obligated to pay a regular assessment.

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(e) Nonpayment of Assessments: Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 10(a) from the delinquency date and the Board may impose a late fee as provided in Section 10(a). In the event of the failure of any Town home Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall constitute a lien on the Town home of such Town home Owner. In the event such Town home Owner fails to pay such assessment within thirty (30) days after the notice from the Board of such default, the Board may accelerate the maturity of the remainder of the installments of assessments due for such Town home Owner for the balance of the calendar year or the following six month period and may enforce collection thereof. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Town home Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Town home Owner (and shall constitute a personal liability of such Town home Owner) and shall be added to and deemed a part of his assessments and the Association shall have a lien for all of the same upon the Town home of such Town home Owner.

(f) Subordination of Lien to Mortgage: Lien of the assessments provided for herein shall be subordinate to the lien of any prior, recorded mortgage or mortgages or trust deed on a Town home made to any bank, savings and loan association or other institutional lender except for the amount of any assessments which becomes due and payable from and after the date such lender obtains title to such Town home pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer of title shall not relieve such Town home from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

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(g) Exemption from Assessment on Lots Owned by Declarant: In order that those Town homes conveyed or leased by Declarant or its Agents may, with reasonable promptness, receive the benefits of common area and other maintenance by the Association for the enjoyment of the Town home Owners, and also be subject to assessments therefore, and so as not to discourage the Declarant from voting for such assessments at such times as the Declarant may still own a substantial number of unoccupied Town homes, and inasmuch as assessments levied against such Town homes impose a burden on the Declarant without the Declarant desiring, or receiving the benefits of maintenance upon such Town home, as may from time to time be provided by the Association, it is therefore expressly provided that no Town home owned by the Declarant shall be subject to the assessments, charges and liens provided for herein until the date upon which such Townhome shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rent therefore or sold pursuant to installment contract or articles of agreement for deed; provided however, that each year, until the First Meeting of the Board of Directors pursuant to the Bylaws, the Declarant shall contribute to the Association the amount, if any, by which the operating expenses of the Association incurred or paid since the date of incorporation (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Association since the date of incorporation.

Upon the conveyance or leasing by Declarant of a Town home which was theretofore entitled to the foregoing exemption from assessments, such Town home and the Town home Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

(h) Initial Assessments: The Declarant shall collect from each purchaser of a Town home, at the time of closing of the purchase thereof, an amount equal to two times the initial estimated monthly assessment allocable to such Town home plus a \$100.00 capital reserve contribution ($\$39.00 \times 2 + \$100.00 = \$178.00$). The amounts so collected shall be utilized to fund a working capital for the Association. The Initial Assessment stated above is a non-refundable contribution to the Association and does not constitute payment of any monthly assessment allocated to the Town home Owner.

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