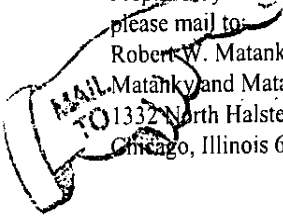




Prepared by and after recording,  
please mail to:  
Robert W. Matanky, Esq.  
Matanky and Matanky  
1332 North Halsted Street, Suite 300  
Chicago, Illinois 60622



① 20010391 MTC GIKK

**DECLARATION OF EASEMENTS AND PARTY WALL RIGHTS**

THIS DECLARATION is made and entered into as of this 19<sup>th</sup> day of February, 2001, by Diversey Commons, L.L.C., an Illinois limited liability company (hereinafter "Developer") and 1726-28 West Diversey Condominium Association (hereinafter "Association").

WHEREAS, Developer is the Owner in fee simple of the property legally described as follows:

Lot 16 in Harland's Subdivision of the South 173 feet of that part lying East of the Chicago and North Western Railway of the West 3/4 of the Northeast 1/4 of Section 30, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois; and commonly known as 1722 West Diversey Parkway, Chicago, Illinois; PIN: 14-30-223-019-0000 (hereinafter "1722 Parcel"); and,

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WHEREAS, Association is the Owner in fee simple of the property except for the Condominium Units legally described as follows:

The 1726-28 West Diversey Condominiums, as delineated on a survey of the following described real estate:

Lots 14 and 15 in Harland's Subdivision of the South 173 feet of that part lying East of the Chicago and North Western Railway of the West 3/4 of the Northeast Quarter of Section 30, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois; which survey is attached to the Declaration of Condominium recorded as Document 00 903966, and commonly known as: 1726-28 W. Diversey Parkway, Chicago, IL 60614; Permanent Index Nos.: 14-30-223-017-0000 and 14-30-223-018-0000

WHEREAS, the parties hereto desire to build a one story masonry garage (herein "Garage") located within the north 21 feet of their properties; and

WHEREAS, to maximize the parking area within said garage the parties have agreed to construct the Garage so that it spans over the West line of the 1722 Parcel and to allow Developer to use the wall located on the Association property (herein the "West Wall") and to allow the Association to use the wall next east of the west line of the 1722 Parcel (herein the "East Wall") as Party Walls for this garage and any future garage, the roof of which is supported by walls situated on both the 1722 Parcel and the Association property ; and

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WHEREAS, the parties hereto recognize that sharing the East Wall and the West Wall (herein collectively referred to as the "Garage Walls") as party walls will increase the actual parking area available in any garage to be built on their respective properties, and reduce the cost of construction; and

WHEREAS, the parties hereto desire to declare and establish for themselves and for their successors, heirs, representatives and assigns the easements and party wall rights and obligations hereinafter stated;

NOW THEREFORE, in consideration of One Dollar in hand paid, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby declare that the Garage Walls shall hereafter be built, held, transferred, sold, conveyed, used, mortgaged and encumbered subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which shall run with the land and be binding on all parties having any interest in the 1722 Parcel or the Association property, or any parts thereof, and shall inure to the benefit of each owner thereof.

The parties hereto further agree as follows:

1. The recitals stated above are hereby incorporated herein by this reference.
2. Association, its successors and assigns, shall have the right to use and the obligation to maintain in good repair the East Wall as a party wall for so long as a garage located on its property, which garage uses the said East Wall is in continuous use and good repair.
3. Developer, its successors and assigns, shall have the right to use and the obligation to maintain in good repair the West Wall as a party wall for so long as a garage is located on the 1722 Parcel, which garage was the said West Wall, and is in continuous use and good repair.
4. Reference in this Declaration to continuous use shall mean that the garage which uses and spans between both Garage Walls (herein the "Garage") shall not be abandoned for more than six months.
5. Any failure to properly maintain the Garage Walls as set forth herein shall create a right of action in favor of the other party, and its successors and assigns, to enforce the obligations and duties imposed herein.
6. Neither of the parties hereto, their successors or assigns, may use the Garage Walls in any manner which will materially interfere with the use and enjoyment thereof by the other.
7. Any and all costs and expenses for the maintenance and preservation of the Garage Walls, and other components of the Garage (including, but not limited to the roof, foundation, walls, floors, doors, etc.), in good condition and repair, shall be borne by the party upon whose land the garage is situated and their successors and assigns. Such that so much of the maintenance and repair of that portion of the Garage which is situated upon the 1722 Parcel shall be borne by the Developer and the maintenance and repair of that portion of the Garage which is situated on the Association's property shall be borne by the Association. If at any time, either of the parties hereto, or their respective successors or assigns, are not using any portion of the Garage in common, then all costs shall be borne by the other party, and its successors and assigns.
8. At any time that either of the parties hereto, or their respective successors or assigns, are obligated to remove the Garage or any of its components and fail to do so after sixty (60) days written notice, then the other party, its successors and assigns, shall have the right to do so and shall be entitled to a Mechanic's Lien on the other party's property for one-half of the amount of the cost incurred for said removal.
9. Any maintenance, repair or removal done hereunder shall be performed timely and in a good and

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workmanlike manner.

10. Each party hereunder is licensed by the other upon reasonable notice and proof of need to enter upon the other party's premises for the limited and express purpose of repairing and maintaining the Garage as hereinabove required; Provided, however, that no such repair, maintenance or demolition shall impair or diminish the then existing structural integrity of any other structure.

11. This Agreement shall terminate at such time as the Garage Wall is no longer used by either party, or any of their successors and assigns.

12. The benefits and the burdens of the covenants herein contained shall annex to and be construed as covenants running with the aforesaid properties herein described and shall bind the respective parties hereto and their respective heirs, legal representatives, successors and assigns. Nothing herein contained however shall be construed to be a conveyance by either party of his or its respective rights in the fee of the real estate on which the Garage or either of the Garage Walls stand.

13. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to neglect or wilful acts or omissions shall apply.

14. No covenant, restriction, condition, obligation, or provision contained in this Declaration shall be deemed to be abrogated by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

15. Each Grantee of the parties hereto and each subsequent Grantee, 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, easements, reservations, liens and charges and the jurisdiction, rights and powers created are reserved by this Declaration and shall be deemed to have agreed to perform all undertakings and to be bound by all agreements and covenants imposed on him or it by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having any interest or estate in the property at any time, and shall inure to the benefit of such 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.

16. In any event, any violation on the part of either party or his or its successors and assigns of any of the restrictions, covenants, terms or conditions of this Declaration to be kept, observed or performed by him or it and which will or is likely to result in damages which are irreparable or impossible of ascertainment, then any other owner is hereby granted the right to prevent or remedy any such threatened or actual violation on the part of any owner or further continuation of any such violation, as the case may be, by means of injunction proceedings or other legal or equitable remedies. The various rights and remedies herein granted shall be in addition to all other rights and remedies which may be available. All said rights and remedies may be exercised either concurrently or consecutively or partly concurrently or partly consecutively, as the case may be.

17. In the event that it becomes necessary to enforce the terms of this Declaration in a court of law, or in equity, then the prevailing party shall be entitled to a judgment including reasonable attorneys' fees and costs. Further, any judgment may be secured by a mechanic's lien on the property of the non-prevailing party.

18. If any term, provision, covenant, easement, agreement or condition in this Declaration shall be

or be held invalid, whether in general or as to any particular situation or circumstance, the remainder of this Declaration and applicability to any other situation or circumstance, as the case may be, shall not be invalidated or terminated thereby but shall remain in full force and effect to all intents and purposes as though such invalid term, provision, covenant, easement, agreement or condition had never been.

19. If any of the covenants or rights created by this Declaration would otherwise violate (a) the rule against perpetuities or some analogous statutory provision or (b) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last of the now living lawful descendants of Richard M. Daley, Mayor of the City of Chicago.

20. As used in this Declaration, the masculine shall mean the feminine or neuter and singular shall mean plural where the context requires to preserve the meaning of the appropriate provision.

21. Anything herein to the contrary notwithstanding, nothing contained herein shall be construed to supersede any ordinance of the City of Chicago, Illinois affecting the 1722 Parcel or the Association's property or any portion thereof.

22. This Agreement shall be construed in conformity with the laws of the State of Illinois and in accordance with the usage in the State of Illinois regarding party walls.

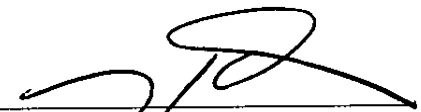
23. This Agreement contains all the terms, conditions and covenants relating to the Garage and the Garage Walls and no modifications, waivers, variations, or releases of duties and obligations under this Agreement shall be binding unless made in writing and signed by the then legal owners of the 1722 Parcel and the Association's property, or so much of either parcel as shall have the exclusive right to use the Garage and the Garage Walls.

24. Any notice required or desired to be served under the provisions of this Declaration to any owner shall be deemed to have been properly delivered three (3) days after deposited in the U.S. Mail, postage prepaid, directed to the last known person who appears as the owner or tax assessee of the respective property, at the last known address for each such person which is publicly listed with a copy of said notice being posted at the property.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date first above written.

Diversey Commons, L.L.C.

Diversey Commons, L.L.C., Developer and  
Initial Board for  
1726-28 West Diversey Condominium Association

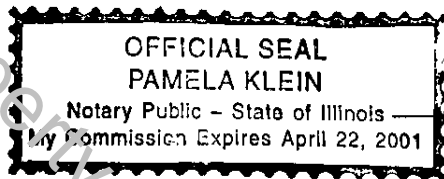
By:   
Barry B. Kreisler, Manager

By:   
Barry B. Kreisler, Manager

STATE OF ILLINOIS )  
  ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for said County and State, do hereby certify that Barry B. Kreisler, as Manager of Diversey Commons, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act on behalf of said company, for the purposes therein set forth.

GIVEN under my hand and seal, this 19<sup>th</sup> day of February, 2001



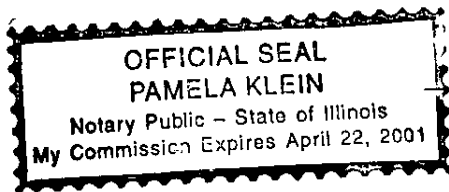
*Pamela Klein*

NOTARY PUBLIC

STATE OF ILLINOIS )  
  ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the said County, in the State aforesaid, do hereby certify that Barry B. Kreisler as Manager of the 1726-28 West Diversey Condominium Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act on behalf of said company, for the uses and purposes therein set forth,

GIVEN under my hand and seal, this 19<sup>th</sup> day of February, 2001



*Pamela Klein*

NOTARY PUBLIC