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DECLARATION OF RESTRICTIONS, EASEMENTS, COVENANTS, PARTY WALL RIGHTS AND MAINTENANCE FOR 42ND STREET TOWNHOME ASSOCIATION

COMMONLY KNOWN AS: 3037-3043 WEST 42ND STREET, CHICAGO,
ILLINOIS

PIN: 19-01-125-010-0000 19-01-125-011-0000
19-01-125-012-0000 19-01-125-013-0000
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UNOFFICIAL COPY**DECLARATION OF RESTRICTIONS,
EASEMENTS, COVENANTS, PARTY
WALL RIGHTS AND MAINTENANCE
FOR 42ND STREET TOWNHOME
ASSOCIATION**

This Declaration is made this 1st day of December, 2004 by 42nd Street Townhomes LLC, an Illinois Limited Liability Company.

RECITALS

WHEREAS, 42nd Street Townhomes, LLC (herein "Declarant"), is the owner in fee simple of the tract of land in the City of Chicago, County of Cook, State of Illinois, the legal description on Exhibit "A" attached hereto, said land being referred to as the Land or real estate for purposes of this Declaration.

WHEREAS, The Declarant plans to improve the real estate with Thirteen (13) Townhomes, hereinafter sometimes referred to as residences, having party walls, which are constructed in two (2) buildings.

WHEREAS, The Declarant intends to convey the Townhomes to individual or multiple purchasers who will hold their interests in the real estate subject to the terms and conditions of this Declaration.

WHEREAS, The purposes of this Declaration are as follows:

- A. To provide protective covenants for the conservation of the financial values and amenities of the Townhomes and for the creation of the rights of way and easements set forth herein.
- B. To provide for the conservation and enhancement of the financial values of all residences comprised by the Townhomes and for the conservation of the integrity, character and architectural uniqueness of said Townhomes to protect future owners.
- C. To establish the terms of the party wall agreements relative to the shared walls of the Townhomes.
- D. To establish certain easements for egress and ingress and for utility service and maintenance.
- E. To establish the terms of maintenance of the roofs, sidewalk easement areas, party walls, common stairways, and parkway areas relative to those areas shared by the Townhomes.

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that each of the parcels of real estate and any improvements shall hereafter be held, transferred, sold, conveyed, occupied, mortgaged and encumbered subject to the restrictions and protective covenants, conditions, easements, charges and liens hereinafter set forth, each and all of which shall with the respect to the real estate, attach to and constitute covenants running with the land and be binding on all parties having any interest in the real estate and improvements or any part thereof and shall inure to the benefit of each owner, their successors, assigns, their mortgagees, and all persons hereafter acquiring an interest in any portion of the real estate thereof.

**ARTICLE I
DEFINITIONS**

1.1 MEANINGS: As used herein (unless the context shall prohibit), the following words shall have the following meanings:

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- a) Agent of Declarant and Developer, 42nd Street Townhomes, LLC, an Illinois Limited Liability Company.
- b) 42nd Street Townhomes. Thirteen (13) townhomes consisting of two (2) groups of eight (8) Townhomes and five (5) townhomes.
- c) Site Plan. The survey attached hereto as Exhibit B.
- d) Easement Areas. All property, real or personal, designated as "easement areas" on the Plat attached as Exhibit B, and shall include without limitation any stairways, sidewalks adjacent to each unit and landscaping .
- e) Party Wall: The demising wall together with the parapet, which exists between two (2) Townhomes.
- f) Townhome: One (1) dwelling unit or residence consisting of a group of rooms within the demising walls.
- g) Occupant: A person or persons in lawful possession of a dwelling unit who may also be an Owner.
- h) Guest: An invitee or visitor of any occupant of a dwelling unit.
- i) Land: The entire parcel set forth on Exhibit B attached hereto which contains all of the Parcels on which the thirteen (13) Townhomes are constructed.
- j) Parcel: The plot of land upon which a Townhome is constructed and which is described on a Exhibit B.
- k) Townhome Owner or Owner: A record owner whether one or more persons or entities (including the Declarant), of a fee simple title to any parcel upon which a Townhome is constructed, but excluding those having such interest merely as security for the performance of an obligation.
- l) Individual Parcels upon which each Townhome is constructed: Those portions of the land described herein more fully shown on the Plats attached hereto as Exhibits C through and including O and incorporated herein by reference.
- m) Homeowner Association: 42nd Street Townhome Association, an Illinois Not-For-Profit Corporation, its successors and assigns.

EASEMENTS

2.1 **GAS EASEMENT:** An easement is hereby reserved for and granted to The Peoples Gas, Light and Coke Company, its successors and assigns, to install, construct, operate, maintain, inspect, repair, renew, replace, remove or abandon in place gas mains and service pipes, together with the necessary valves, valve boxes, regulators and other attachments, connections and fixtures for distributing gas to properties within and without the subdivision, upon, under, across and within all roads, streets, alleys and common areas (if any) within the subdivision provided however that such facilities, equipment and appurtenances, when installed, will not interfere with the movement of traffic upon such roads, streets, alleys or common areas.

2.2 **MISCELLANEOUS UTILITIES:** Where any pipes, wires, meters, sewer lines and cleanouts, conduits or public utility lines lie within the boundaries of a Townhome parcel, any portions thereof, servicing only that parcel, shall be deemed a part of that parcel. Each Townhome has been provided with its own water, electric and telephone service. Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits, wires, meters and equipment, over, under, along and on any part of the Townhome Parcels, as they exist on the date of the recording hereof.

2.3 **CABLE TELEVISION, ELECTRIC AND TELEPHONE EQUIPMENT:** Cable Television Pedestals have been or shall be constructed in an area or areas as delineated on the Plat, and referred to therein as CABLE TELEVISION

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PEDESTAL EASEMENT. Said areas contain cable television equipment that services each of the Townhomes. Meter Stands have been or shall be constructed in an area or areas as delineated on the Plat, and referred to therein as ELECTRICAL METER STAND EASEMENT. Said areas contain certain electrical equipment that services each of the Townhomes, including but not limited to electrical meters. Additionally, Telephone Equipment Boxes have been or shall be constructed in an area or areas as delineated on the Plat, and referred to therein as SBC TELEPHONE EASEMENT. Said areas contain telephone equipment that services each of the Townhomes. Easements are hereby declared and granted for cable television, electric and telephone utility purposes and for such other utility purposes as may be necessary and to allow the respective utility companies to maintain and service the utility equipment which is or may be located in said telephone equipment box, electric meter stand and cable television pedestal or other designated utility areas.

2.4 CITY OF CHICAGO SEWER AND WATER EASEMENT: A covenant running with the land for maintenance and repair of the common sewer lines located anywhere on the property from the point of connection to the sewer main in the public street shall be the responsibility of the owners of the property. An easement is hereby granted to the City of Chicago to go upon the land at any time for the purpose of installation, maintenance, replacement and repair of water, sewer and any other facilities as may be under the control of said City.

2.5 CONSTRUCTION EASEMENT: Declarant reserves for itself and each owner an easement and right to overhang and encroach upon, over and on any portion of adjacent Townhomes with a roof, portico, retaining wall or other projection, appurtenance or fixture to any building situated on a parcel as the same exists on the date of the recording hereof, but not otherwise, together with the right to go upon each such portion of an adjacent Townhome for the purpose of reconstructing, repairing, maintaining, inspecting or replacing such roof, portico, retaining wall or other projection, appurtenance or fixture to any such building. In the event that, by reason of the construction, settlement or shifting of any building as originally constructed or as now existing, any part of a residential unit encroaches or shall hereafter encroach upon any part of or any Townhome Parcel, or, if by reason of the design or construction of utility and ventilation systems, any main pipes, ducts or conduits serving more than one Townhome Parcel encroach or shall hereafter encroach upon any part of any Parcel, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Parcel so long as all or any part of the building in which such Townhome is located shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of any owner if such encroachment be or its use is detrimental to or interferes with the reasonable use and enjoyment of the adjacent Townhomes by the other owners and if it occurred due to the willful conduct of any owner.

2.6 EASEMENTS FOR INGRESS AND EGRESS AND FOR MAINTENANCE: The Declarant hereby creates and grants for its heirs, successors and assigns, as easements appurtenant to the Land, perpetual easements for the ingress and egress, of all manner and type, as more fully set forth below, over and upon the Easement Parcels located on the Land which will survive the creation of a home owners association.

A. Description of Easements.

Each individual Townhome shall have a mutual perpetual easement for ingress and egress for pedestrians, bicycles, and other similar non-motorized devices over, across and upon the portions of the land referred to as Parkway, Walkway Areas, and Common Areas. This easement shall be referred to and collectively known as Common Easement Areas and shall be so delineated on the Plat attached as Exhibit B for the use and benefit of the individual parcels described on Exhibits C through O attached.

B. Use of Easement.

(1) Use of Common Easement Areas is confined to owners, tenants, residents, guests, invitees and agents and servants of the owners of each Townhome by pedestrians, or for other ingress and egress purposes as may occur over the areas as may be necessary to provide access to or use of the designated Townhome and their entrances. No owner of a Townhome may obstruct or prevent free access over, across and upon any portion of the Common Easement Areas.

2.7 EASEMENT IN PERPETUITY: All easements and rights described herein are easements appurtenant to and running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns and any

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owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

2.8 Notwithstanding any provision herein to the contrary, the easements created under this Section shall be subject to: (1) the right of the Developer to improve the Common Space in accordance with such plans and specifications as it deems appropriate; and (2) the right of Developer to execute all documents and do all other acts and things affecting the Common Space which, in the Developer's opinion, are desirable in connection with Developer's rights hereunder, provided any such document or act or thing is not inconsistent with the property rights of any Owner or of the Committee. Developer reserves the right to use any portion of the Common Space as it deems necessary in connection with the sale or rental of Improvements being constructed or to be constructed within the Property, including but not limited to parking for sales personnel and sales prospects.

2.9 In the event that (i) by reason of design, construction, location, repair, settlement, shifting or movement, any dwelling, garage or other Improvement as originally constructed by the Developer on any Parcel or upon the Common Space overhangs or otherwise encroaches or shall hereafter encroach upon any other Parcel or upon the Common Space, or (ii) by reason of such design, construction, location, repair, settlement, shifting, or movement it shall be necessary for any Townhome Owner to use or occupy any portion, of the Common Space for any reasonable use appurtenant thereto which will not unreasonably interfere with the use or enjoyment of the Common Space by other Townhome Owners, or (iii) by reason of the design or construction of utility, ventilation, and exhaust systems, as originally constructed by Developer, any mains, pipes, ducts or conduits servicing any Parcel or more than one Parcel, encroach or shall hereafter encroach upon any part of any Parcel, or the Common Space, then, in any such case, perpetual easements for the maintenance of such encroachment and for such use of the Common Space, together with the right to enter upon such other Parcel or Common Space to maintain, repair, and replace encroachment are hereby established and shall exist for the benefit of such Parcel or the Common Space, as the case may be, so long as such dwelling, garage, or other improvement shall remain standing provided, however, that if any such dwelling, garage or other improvement is partially or totally destroyed and thereafter repaired or rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force; provided further that in no event shall a valid easement for any encroachment or use of the Common Space be created in favor of any Townhome Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Common Space by others or if it occurred due to the willful conduct of any Townhome Owner.

2.10 REFERENCE TO EASEMENTS: Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall not be required, but any such reference in an instrument, if contained therein, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

PARTY WALLS, ROOF AND EASEMENT AREAS

3.1 PARTY WALL DESCRIPTION: Each Townhome has either one (1) or two (2) party walls together with parapets comprising the side demising walls of the dwelling units (which may also be referred to herein as a dividing wall) and running in an East to West direction or North to South direction, as the case may be. Said party walls and parapets are constructed of either masonry, wood or metal frame and plasterboard materials or both. The wall separating one Townhome from another is herewith declared as a party wall. All references herein to a party wall shall include the parapet extending above the party wall. The Declarant herewith sets forth the rights, duties and obligations in connection with said party walls.

3.2 MAINTENANCE.

A. The party wall separating two (2) Townhomes shall be for the exclusive use and benefit of the Townhomes which share said wall, their respective owners, heirs, legal representatives, successors, and assigns subject to the terms of this Declaration.

B. Each of the owners of the Townhomes sharing a party wall may use said party wall in any manner which shall not materially interfere with the use and enjoyment thereof by the other.

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C. Any and all costs and expenses necessary for the maintenance and preservation of the party wall in good condition and repair shall be borne equally between the Townhome owners who share said party wall; provided, however, that if at any time, the Townhome on one side of the party wall has been removed, the owner of the Townhome that shared said wall which remains shall bear the sole cost of so maintaining and preserving the party wall after the owner of the Townhome which was removed has performed the necessary construction to allow said remaining wall to be a proper exterior wall in accordance with the material and quality and design of other exterior walls on the Townhomes.

D. Declarant hereby sets forth that if it shall hereafter become necessary or desirable to repair or replace the whole or any portion of a party wall, the expense of such repairing or rebuilding shall be shared equally by the Townhome owners who share said party wall, and whenever the party wall or such portion thereof shall be rebuilt, it shall be erected in the same location and on the same line, and be of the same size, and the same or similar material, and of like quality with the present party wall, except where said party wall shall no longer be a shared party wall, but become an exterior wall, then in that case, the material and quality shall be similar to the material and design of other exterior walls on the Townhomes.

Notwithstanding anything herein contained to the contrary, it is further agreed that in the event of damage or destruction of a party wall from any cause, other than the negligence of either of the Townhome owners sharing said party wall, and other than on account of fire or other casualty to one of the Townhomes sharing said party wall, either of the parties sharing said party wall shall have the right to repair or rebuild the party wall, and (i) the expense thereof shall be apportioned as herein above provided, and (ii) each Townhome owner shall have the full use of the party wall so repaired or rebuilt. If damage to or destruction of the party wall shall have been caused by loss by fire or other casualty to the property of, or by the negligence of one party sharing said party wall, such party shall bear the entire cost of repair or rebuilding. If either party sharing said party wall shall neglect or refuses to pay his share as aforesaid, the other party may have the party wall repaired or rebuilt and, in addition to any other remedy available to him by law, shall be entitled to have a mechanics lien on the premises of the party so failing to pay in the amount of such defaulting party's share of the repair or rebuilding cost. Any repairing or rebuilding done hereunder shall be performed timely and in a good and workmanlike manner, and to the extent possible, accomplished without interruption to the normal usage of the Townhomes which share said party wall.

E. Each Townhome owner sharing a party wall is licensed by the other Townhome owner who shares said wall, upon reasonable notice and proof of need, to enter upon the other owner's (herein "host owners") premises for the limited and expressed purpose of erecting, repairing or rebuilding the party wall as herein above provided; provided, however, that no such erecting, repairing or rebuilding shall impair or diminish the then existing structural integrity of the other Townhome or the Townhomes or impair the host owner's use and enjoyment of his townhome.

F. All references to party walls contained herein shall also apply to the scuppers and drains which may run along, upon or within said party walls, and the portion of this Declaration relating to party walls shall also relate to said scuppers and drains as well.

G. In the event the Townhome of one owner is no longer connected to the party wall, the other owner, at such time as it removes and disconnects its Townhome from the party wall, shall demolish and remove the party wall at its sole cost and expense, leaving said wall in a suitable condition to remain as an exterior wall, and then and thereafter this Party Wall Agreement shall terminate as to such Townhome and neither party shall have any right, duty or obligation hereunder (except to fulfill his obligation hereunder) which shall have accrued up to and including the date of such termination.

H. Each Townhome Owner shall not change the facade of the property, add awnings, change front doors or add storm doors or windows without the prior consent of the Home Owner's Association.

I. The benefits and burdens of the covenants herein contained shall annex to and be construed as covenants running with the aforesaid parcels 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 respective rights in the fee of the real estate on which the party wall shall stand.

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

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C. Any and all costs and expenses necessary for the maintenance and preservation of the party wall in good condition and repair shall be borne equally between the Townhome owners who share said party wall; provided, however, that if at any time, the Townhome on one side of the party wall has been removed, the owner of the Townhome that shared said wall which remains shall bear the sole cost of so maintaining and preserving the party wall after the owner of the Townhome which was removed has performed the necessary construction to allow said remaining wall to be a proper exterior wall in accordance with the material and quality and design of other exterior walls on the Townhomes.

D. Declarant hereby sets forth that if it shall hereafter become necessary or desirable to repair or replace the whole or any portion of a party wall, the expense of such repairing or rebuilding shall be shared equally by the Townhome owners who share said party wall, and whenever the party wall or such portion thereof shall be rebuilt, it shall be erected in the same location and on the same line, and be of the same size, and the same or similar material, and of like quality with the present party wall, except where said party wall shall no longer be a shared party wall, but become an exterior wall, then in that case, the material and quality shall be similar to the material and design of other exterior walls on the Townhomes.

Notwithstanding anything herein contained to the contrary, it is further agreed that in the event of damage or destruction of a party wall from any cause, other than the negligence of either of the Townhome owners sharing said party wall, and other than on account of fire or other casualty to one of the Townhomes sharing said party wall, either of the parties sharing said party wall shall have the right to repair or rebuild the party wall, and (i) the expense thereof shall be apportioned as herein above provided, and (ii) each Townhome owner shall have the full use of the party wall so repaired or rebuilt. If damage to or destruction of the party wall shall have been caused by loss by fire or other casualty to the property of, or by the negligence of one party sharing said party wall, such party shall bear the entire cost of repair or rebuilding. If either party sharing said party wall shall neglect or refuse to pay his share as aforesaid, the other party may have the party wall repaired or rebuilt and, in addition to any other remedy available to him by law, shall be entitled to have a mechanics lien on the premises of the party so failing to pay in the amount of such defaulting party's share of the repair or rebuilding cost. Any repairing or rebuilding done hereunder shall be performed timely and in a good and workmanlike manner, and to the extent possible, accomplished without interruption to the normal usage of the Townhomes which share said party wall.

E. Each Townhome owner sharing a party wall is licensed by the other Townhome owner who shares said wall, upon reasonable notice and proof of need, to enter upon the other owner's (herein "host owners") premises for the limited and expressed purpose of erecting, repairing or rebuilding the party wall as herein above provided; provided, however, that no such erecting, repairing or rebuilding shall impair or diminish the then existing structural integrity of the other Townhome or the Townhomes or impair the host owner's use and enjoyment of his townhome.

F. All references to party walls contained herein shall also apply to the scuppers and drains which may run along, upon or within said party walls, and the portion of this Declaration relating to party walls shall also relate to said scuppers and drains as well.

G. In the event the Townhome of one owner is no longer connected to the party wall, the other owner, at such time as it removes and disconnects its Townhome from the party wall, shall demolish and remove the party wall at its sole cost and expense, leaving said wall in a suitable condition to remain as an exterior wall, and then and thereafter this Party Wall Agreement shall terminate as to such Townhome and neither party shall have any right, duty or obligation hereunder (except to fulfill his obligation hereunder) which shall have accrued up to and including the date of such termination.

H. The benefits and burdens of the covenants herein contained shall annex to and be construed as covenants running with the aforesaid parcels 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 respective rights in the fee of the real estate on which the party wall shall stand.

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

3.3 COMMON ROOFS:

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A. The roofs are separated by parapet walls have been or will be constructed in each of the two (2) Townhome groupings covering the total of thirteen (13) Townhomes which occupy the tract of land. It is hereby declared that it is the obligation of the owner of each Townhome to maintain its roof covering its Townhome. Said obligation to maintain the roof shall extend to and include the obligation to prevent leakage or penetration into adjacent Townhomes. In the event that maintenance of the roof shall require repairing, servicing or replacement of the roof covering a Townhome, for any reason, then in that event, the owner of the Townhome that has its roof area repaired, serviced, or replaced, shall pay any and all costs and expenses thereof where such repair, service or replacement has occurred.

B. In the event it is ever necessary to construct a common roof over any Townhomes, then all costs relative to the maintenance, repair and replacement of that roof shall be shared equally by the Owners of each townhome of the affected common roof. All decisions relative to the maintenance, repair and replacement of any such common roof shall be determined by the Homeowner's Association as set out in its by-laws. If any Owner shall neglect or refuse to pay its share of the costs of any maintenance, repair and replacement of that roof, then the Homeowners Association may have the roof repaired or rebuilt and, in addition to any other remedy available to Homeowners association by law they shall be entitled to have a mechanics lien on the Townhome of the owner so failing to pay the amount of such maintenance, repair or replacement cost. Any repairing or rebuilding done hereunder shall be performed timely and in a good and workmanlike manner, and to the extent possible, accomplished without interruption to the normal usage of the Owners.

C. Notwithstanding anything herein contained to the contrary, it is further agreed that in the event of damage or destruction to a roof from any cause, other than the negligence of a Townhome Owner, and other than on account of fire or other casualty to one of the Townhomes, then the Owner(s) of said roof shall have the right to repair or rebuild the roof, and the expense thereof shall be paid as herein above provided. If damage to or destruction of a roof shall have been caused by loss or fire or other casualty to the property, or by the negligence of one Owner, such Owner shall bear the entire cost of repair or rebuilding. If any Owner shall neglect or refuse to make repairs to or replace its roof as may be needed so as to cause damage to another Townhome Owner's townhome then the innocent Owners may have the roof repaired or rebuilt and, in addition to any other remedy available to him by law or through the Homeowner's Association, shall be entitled to have a mechanic's Lien on the premises of the Owner so failing to pay the amount of such repair or rebuilding cost. Any repairing or rebuilding done hereunder shall be performed timely and in a good and workmanlike manner, and to the extent possible, accomplished without interruption to the normal usage of the Townhomes which share said roof.

D. The Townhome owners or Homeowners Association is licensed by the Townhome Owners, upon reasonable notice and proof of need, to enter upon the other owners premises (herein "host Owner") for the limited and express purpose of repairing or rebuilding any roof as herein above provided, provided, however, that no such repair or rebuilding shall impair or diminish the then existing structural integrity of the other Townhome or impair any owners access to their Townhome. See 3.2E.

E. The benefits and burdens of the covenants herein contained shall annex to and be construed as covenants running with the aforesaid Townhomes or parcels herein described and shall bind the respective owners hereto and their respective heirs, legal representatives, successors and assigns. Nothing herein contained, however, shall be construed to be a conveyance by any party of their respective rights in the fee of the real property on which the roof is located.

F. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls or roof maintenance obligations and liability for property damage due to neglect or willful acts or omissions, shall apply thereto.

GENERAL PROVISIONS

4.1 The covenants and restrictions of this Declaration shall run with and bind to the land so as to insure the owners of parcels described herein full enjoyment and benefit of their property. They shall inure to the benefit of and be enforceable by the owner of any parcel or parcels subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

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4.2 **NON-WAIVER OF COVENANTS:** No covenant restriction, condition, obligation or provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

4.3 **SUCCESSORS AND ASSIGNS:** Each grantee of the Declarant, 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 or 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 by this Declaration.

4.4 **SURVIVAL:** 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 the 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.

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 survivor of the now living lawful descendants of the incumbent President of the United States of America.

4.5 **GENDER OF TERMS; NUMBERS:** 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.

4.6 **SUPERIORITY:** Nothing contained herein shall be construed to supersede any ordinance of the City of Chicago, Illinois, affecting the property or any portion thereof.

4.7 **LAWS OF ILLINOIS:** This Agreement shall be construed in conformity with the laws of the State of Illinois and in accordance with the usage in said State of Illinois regarding party walls and easements. The rule of strict construction does not apply to the easements granted herein, and specifically including the Common Easements. The easement grants contained in this Declaration shall be given a reasonable construction so that the intention of the Declarant to confer a commercially usable right of enjoyment to the Townhome owners is carried out.

4.8 **MODIFICATIONS:** This agreement contains all the terms, conditions and covenants relating to the Townhomes described herein and no modifications, waivers, variations or releases of duties and obligations under this Declaration shall be binding unless made in writing and signed by one hundred percent (100%) of the Townhome owners affected herein. In the event any modification of this Agreement is desired as it relates to exterior modifications to any of the Townhomes as Set forth in this declaration, the Homeowners Association may make any decisions regarding such modifications.

4.9 **AMENDMENTS.** Except as hereinafter otherwise provided, the provisions of this Declaration may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all members of the Board and all of the Unit Owners. Any amendment, change or modification shall conform to the provisions of the Act and shall be effective upon recordation thereof. No change, modification or amendment which affects the rights, privileges or obligations of the Developer shall be effective without the prior written consent of the Developer. The By-Laws may be amended in accordance with the provisions thereof.

4.10 **ADDITIONS:** There shall be no additions or structures or other enclosures constructed on the Townhomes or the parcels which they occupy.

4.11 **INSURANCE:** No owner shall permit anything to be done or kept in his Townhome which will result in the increase in the rate charged or in the cancellation of any insurance carrier by any other Townhome owner, or which would be in violation of any law.

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4.12 **NOTICE:** Any notice required or desired to be given under the provisions of this Declaration to any owner shall be deemed to have been properly delivered when deposited in the U.S. mail, postage prepaid, directed to the last known person who appears as an owner or other persons, at the last known address for each such person which is publicly listed if other than at the address of the Townhome.

4.13 Each grantee by the acceptance of a deed of conveyance to a Townhome in 42nd Street Townhomes and each purchaser under any contract for such deed or other conveyance, accepts the same subject to all covenants, restrictions, easements, charges and liens and the jurisdiction, rights and powers created by this Declaration; and 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 inure to the benefit of such person in like manner as if he had been the original grantee under the deed of conveyance or in any mortgage or trust deed or other evidence of obligation. The rights described in this Article or described in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcel owners as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

4.14 The dominant tenement shall be considered to be the structures located on the tract of land legally described on Exhibit A attached hereto (the Townhomes) and not the land on which said structures rest.

4.15 The change, modification or rescission accomplished under the provisions of this Declaration shall be effective upon recordation of such instrument in the office of the Recorder of Deeds of Cook County, Illinois.

4.16 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class community.

4.16 Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by the owner of a parcel described herein to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

CASUALTY AND INSURANCE

5.1 **RECONSTRUCTION:** In the event that any Townhome shall be damaged or destroyed by fire, other casualty or any other cause or event whatsoever, the owner thereof shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly and as reasonably possible, to the condition as near as possible in which such property was immediately prior to such damage or destruction.

5.2 **INSURANCE:** To assure the prompt repair, restoration or rebuilding of any Townhome damaged or destroyed by fire or other casualty, each owner shall maintain in full force, from time to time, insurance covering the Townhome owned by him, consisting of or providing at a minimum all the protection afforded by the insurance generally described as fire, extended coverage, vandalism and malicious mischief, to one hundred percent (100%) of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation.

ARTICLE II HOMEOWNERS ASSOCIATION

SECTION 1: Creation.

The Owner shall cause to be incorporated under the laws of the State of Illinois a not-for-profit corporation to be named the 42nd Street Townhome Association (hereafter referred to as the "Homeowners Association") or any name similar thereto.

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The Owner, 42nd Street Townhomes LLC, an Illinois Limited Liability Company, is currently the owner of all parcels and parcels on Exhibits A through O.

SECTION 2: Responsibility.

The Homeowners Association shall be the governing body for all the owners of parcels and Townhomes as more fully described in Article I above and shall be responsible for the operation, maintenance and repair of the property entrusted to the care of the Homeowners Association as hereinafter specified. It shall exercise all powers necessary to fulfill its obligation as delineated in this Declaration, its Articles of Incorporation, and its By-laws.

SECTION 3: Membership.

Each Townhome owner and their successors in title, by acceptance and delivery of a deed of conveyance to a Townhome in 42nd Street Townhomes shall become a member of the 42nd Street Townhome Association which shall be responsible for the maintenance, repair, upkeep of the Common Easement Areas including maintenance of any lighting or other utilities relative to the Common Easement Areas and have other responsibilities as set out herein. Every person or entity who or which is a record owner of a Townhome in 42nd Street shall be a member of the Homeowners Association irrespective of the inclusion, exclusion, the incorporation by reference or any specific expression or lack thereof to that effect in the deed or other documents or conveyance. Membership is appurtenant to and shall not be separate from ownership of a parcel. Thus, membership shall automatically terminate upon the sale, transfer or other disposition by a member of his ownership of a Townhome described in Article I, at which time the new owner shall automatically become a member of the Homeowners Association. If more than one person or entity is the record owner of a Townhome, all such persons or entities shall be members.

Each member of the Homeowners Association shall be bound by and shall observe the terms and provisions of this Declaration, the Articles of Incorporation and by-laws of the Homeowners Association and the Rules and Regulations promulgated from time to time by the Homeowners Association or its Board of Directors.

Any person or entity who holds an interest in a Townhome in 42nd Street Townhomes merely as a security for the performance of an obligation, or any person in possession of a parcel under a contract to purchase such Townhome shall not be a member of the Homeowners Association nor have voting rights.

Membership in this Association is not transferable or assignable, except only as is provided herein.

SECTION 4: Voting Rights.

The Homeowners Association shall have one class of voting membership each Townhome is entitled to cast only one vote without regard to the number of owners of each Townhome.

SECTION 5: Powers and Duties of the Homeowners Association.

The Homeowners Association shall be responsible for the operation, maintenance and repair of the entrances, appurtenant electrical and mechanical systems, located in the rights-of-way. The Homeowners Association shall maintain, repair, clean and replace the walkways, driveways, stairways and all common areas described in the Declaration as Common Easement Areas.

The Homeowners Association shall have the right to suspend the voting rights of any member for any period during which any assessment levied by the Homeowners Association against the member's parcel remains unpaid.

SECTION 6: Meetings.

The initial meeting of the voting members shall be held upon ten (10) days written notice given by the Declarant. Such meeting at Declarant's discretion may be held at any time after at least seventy-five percent (75%) of the Townhomes

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are sold and occupied. Thereafter, there shall be an annual meeting of the voting-members as provided in the Homeowners Association By-laws.

Special meetings of the voting members may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the voting members, or for any other reasonable purpose. Said meetings may be called by the president, the Board of Directors or the voting members having, in the aggregate, not less than thirty-three and one-third percent (33 1/3%) of the total votes of the Homeowners Association.

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 or required by the Illinois General Not-For-Profit Corporation Act, the Articles of Incorporation of the Homeowners Association, or the By-laws of the Homeowners Association, 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.

Annual Meeting: An annual meeting of the members entitled to vote shall be held in the month of October of each year for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If such day be a Sunday or a legal holiday, the meeting shall be held at the same hour on the next succeeding business day.

Place of Meeting: The Board of Directors may designate any location as the place of meeting for any annual or regular meeting or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in the State of Illinois.

Notice of Meeting: Written notice stating the place, date, and hour of any meeting of members shall be delivered to each member not less than seven (7) nor more than sixty (60) days before the date of such meeting, or, in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets, not less than twenty (20) nor more than sixty (60) days before the date of the meeting. However, each Owner shall receive written notice mailed or delivered no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of the proposed annual budget or any increase, or establishment of a budget. In case of a special meeting or when required by statute or by these By-Laws, the purpose for which the meeting is called shall be stated in the notice.

If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Homeowners Association, with postage thereon prepaid. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken.

Informal Action by Members: Any action required to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of members entitled to vote, may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed either (i) by all of the members entitled to vote with respect to the subject matter thereof, or (ii) by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voting.

If such consent is signed by less than all of the members entitled to vote, then such consent shall become effective only: (1) if, at least five (5) days prior to the effective date of such consent, a notice in writing of the proposed action is delivered to all of the members entitled to vote with respect to the subject matter thereof, and (2) if, after the effective date of such consent, prompt notice in writing of the taking of the corporate action without a meeting is delivered to those members entitled to vote who have not consented in writing.

SECTION 7: Board of Directors.

A Board of Directors shall manage the affairs of the Homeowners Association. At the initial meeting of the voting members, a Board of at least three (3) Directors shall be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. The By-laws of the Homeowners Association shall set forth the general powers of the

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Board, the number, tenure and qualification of Directors, their term of office, manner of election and removal and method of operation of the Board.

Quorum: A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If less than a quorum is present at said meeting, a majority of the directors present may adjourn the meeting to another time without further notice.

The voting members having at least sixty-six percent (66%) of the total votes may from time to time increase or decrease such number of persons on the Board or may increase the term of office of the Board members, provided that such number shall be not less than three and that the terms of at least one-third of the persons on the Board shall expire annually.

Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the voting members having sixty-six percent (66%) of the total votes.

The Board shall elect from among its members the following officers:

- a. A president who shall preside over both its meetings and those of the voting members and who shall be the chief executive officer of the Board.
- b. One or more vice presidents who shall assume the duties of the president if the president is unable to fulfill his duties.
- c. A secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall perform all the duties incident to the office of secretary.
- d. A treasurer who shall keep the financial records and books of account

The Board may elect such other officers, as it deems necessary. The officers shall exercise their functions according to the By-laws of the Homeowners Association. The members of the Board and the officers thereof shall not be liable to the Homeowners Association for any mistake of judgment or actions or omissions made in good faith while acting in their capacity as directors or officers. The Homeowners Association shall indemnify and hold harmless the members of the Board and the officers thereof against all contractual liability to others arising out of contracts made by them.

In the event of any disagreement between any members of the Homeowners Association relating to the use or operation of the common property or any question or interpretation of application of the provisions of this Declaration or the By-laws of the Homeowners Association, the determination thereof by the Board shall be final and binding on each and all such members of the Homeowners Association.

Removal: Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create any contract rights.

SECTION 8: Contracts.

The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

SECTION 9: Checks, Drafts, etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the treasurer and countersigned by the president or a vice-president of the corporation.

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SECTION 10: Deposits.

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 11: Gifts.

The Board of Directors may accept on behalf of the Homeowner Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Homeowner Association.

SECTION 12: Finances.

Each Townhome Owner shall receive, at least 30 days prior to the adoption thereof by the Board of Directors, a copy of the proposed annual budget. The Board of Directors shall annually supply to all Parcel Owners an itemized accounting of the common expense for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves. Each parcel Owner shall receive written notice mailed or delivered no less than 10 and not more than 30 days prior to any meeting of the Board of Directors concerning the adoption of the proposed annual budget or any increase in the budget or established of an assessment.

SECTION 13: Books and Records.

The Board of Directors shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by any townhome Owner or their mortgagees and their duly authorized agents or attorneys.

- i. Copies of the Declaration, other duly recorded covenants and bylaws and any amendments, articles of incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board shall be available.
- ii. Detailed accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association shall be maintained.
- iii. The minutes of all meetings of the Association and the Board of the Association shall be maintained. The Association shall maintain these minutes for a period of not less than Seven (7) years.
- iv. Ballots and proxies related thereto, if any, for any election held for the Board of the Association and for any other matters voted on by the Parcel Owners shall be maintained for a period of not less than One (1) year.
- v. Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986 shall be maintained.

SECTION 14: Creation of the Lien and Personal Obligation of Assessments.

That each Townhome owner, by acceptance of a deed or other document of conveyance therefor, whether or not it shall be so expressed in any deed or other document of conveyance, shall be deemed to covenant and agree to pay to the Homeowners Association regular assessments or charges and special assessments for capital improvements as provided herein. Such assessments shall be fixed, established and collected from time to time as hereinafter provided, and shall be a charge against and a continuing lien upon the parcel against which such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge against and a continuing lien upon the parcel against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of such parcel at the time when the assessment falls due.

SECTION 15: Purpose of Assessments.

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The assessments levied by the Homeowners Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Townhome Owners and in particular for the operation, maintenance and repair of the common easement areas.

SECTION 16: Basis of Regular Assessments.

There shall be initial monthly assessments set out in the Developer Budget, thereafter and only as determined by a vote of the Board of Directors of the Homeowners Association, as hereinafter provided, for the next succeeding year and at the end of that year for each succeeding year. The Board of Directors of the Homeowners Association may, at any time, after consideration of current maintenance costs and future needs of the Homeowners Association, fix the actual assessment for any year at an amount less than that previously set for that year.

SECTION 17: Special Assessments for Capital Improvements.

In addition to the regular assessments authorized by Section 12 hereof, the Homeowners Association may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of the subdivision provided that any such assessment shall have the approval and consent of sixty-six percent (66%) of all members of the Board of Directors, at a meeting duly called for this purpose.

The Homeowners Association shall have standing to enforce any and all of the covenants and restrictions set forth herein and any subsequently recorded Restrictive Covenants which when recorded shall apply to Townhomes. Each Townhome owner hereby consents to said standing and acknowledges that the Homeowners Association may enforce said covenants and restrictions by an action in its own name in law or equity. Each parcel owner further agrees that in the event the Homeowners Association is required to bring suit or other legal action, or defend any action, in connection with the enforcement of these covenants and restrictions, if the Homeowners Association is the successful party in such suit or action, the Homeowners Association shall recover all its costs, including reasonable attorneys' fees, and other costs and expenses of litigation and discovery, from the persons or entity against whom such action is commenced or defended. This provision shall not, however, give any right of recovery of attorneys' fees or costs to any member.

SECTION 18: Change in Basis of Regular Assessments.

Subject to the limitation of Section 12 hereof and for the periods therein specified, the Homeowners Association may change the maximum and basis of the regular assessments fixed by Section 12 hereof prospectively for any such annual period, provided that any such change shall have the approval of two thirds of the vote of the members of the Board of Directors, at a meeting duly called for this purpose.

SECTION 19: Quorum for Any Action Authorized under Sections 11 and 12.

The Quorum required for any action authorized by Sections 11 and 12 hereof shall be the presence in person at the meeting of the Board of Directors, that number of directors having sixty-six percent (66%) of the total votes that could be cast by the Board. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be the same number, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 20: Date of Commencement of Regular Assessments.

The regular assessments provided for herein shall commence on the date (which shall be the first (1st) day of a month) fixed by the Board of Directors of the Homeowners Association to be the date of commencement.

SECTION 21: Duties of the Board of Directors.

The Board of Directors of the Homeowners Association shall fix the date of "commencement and the amount of the

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assessment against each parcel for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Homeowners Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Homeowners Association shall upon demand at any time furnish to any owner liable of said assessment a certificate in writing, signed by an officer of the Homeowners Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 22: Maintenance of Easement Areas Homeowners Association

The Common Easement Areas shall be maintained by the Homeowners Association. All decisions relative to maintenance shall be made by the directors of the Homeowners Association.

Notwithstanding the foregoing, each Townhome Owner shall be obligated to insure that the portions of the walk way located on such Owner's parcel shall be maintained and kept free of all debris and that such walkway area is passable and free from obstruction for purposes of ingress and egress to the Townhome or any Townhome.

SECTION 23: Effect of Non payment of an Assessment.

If the assessments are not paid on the date when due (being the date specified in Section 14 hereof), then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection including reasonable attorney fees thereof as hereinafter provided, thereupon become a continuing lien on the property and an equitable charge running with the land touching and concerning it, which shall bind the property in the hands of the then owner, his heirs, devisees, personal representatives, assigns, successors and grantees. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation to his successors in title, unless expressly assumed by them. If title to a Townhome is held by an Illinois Land Trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a parcel is held by more than one owner, all owners shall be jointly and severally liable. The lien shall attach to rents due from parties in possession to the record owners, provided that it shall be subordinate to an Assignment of Rents held by a mortgage lender delivered in connection with a first mortgagee loan to purchase the property.

If the assessment is not paid within thirty (30) days after the delinquency date the assessment shall bear interest from the date of delinquency at the maximum rate of interest per annum permitted by the usury laws of the State of Illinois, and the Homeowners Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment all the costs of preparing and filing the complaint and maintaining and concluding such action, including: the cost of title reports, and in the event a personal judgment of decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with all costs of the action. The venue for all actions at law shall be in The Circuit Court of Cook County, Illinois. The persons in possession shall be authorized to accept summons for the owners of the parcel.

In the event that title to any parcel is conveyed to a land trustee, upon the demand of the Homeowners Association the trustee shall furnish the Homeowners Association with a certified copy of the trust agreement and a disclosure of the then beneficial owners of that trust, so that the Homeowners Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

SECTION 24: Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein may for any reason be subordinated by the Homeowners Association by written document executed by its duly authorized officers and shall without any writing be subordinate to the lien of any mortgage placed upon the properties subject to assessments for the purchasing of the subject parcel or parcels; provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages; and provided further that such subordination shall apply only to the assessments which have become

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due and payable prior to sale or transfer of such property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The owners agree upon accepting title that the lien of the assessments shall be prior to the homestead rights of the owners, since it runs with the land and is in existence before commencement of ownership interests.

SECTION 25: Exempt Property.

The following described property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- a. all property to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b. all property exempted from taxation by the laws of the State of Illinois, upon the terms and to the extent of such legal exemption;
- c. all vacant, unimproved parcels and parcels;
- d. all property or parcels owned by the Declarant, 42nd Street Townhomes LLC.

SECTION 26: Amendments.

The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors after first obtaining approval and consent of sixty-six percent (66%) of the owners. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given. The By-Laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, the articles of incorporation, or the Declaration.

SECTION 27: Enforcement.

Any violation on the part of Townhome Owner of any of the restrictions, covenants, terms or conditions of this Declaration to be kept, observed or performed by him 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 the further continuation of any such violation, as the case may be, by means of injunction proceedings or other legal 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 currently or consecutively or partly concurrently and partly consecutively as the case may be.

SECTION 28. Exterior.

The Board of Directors shall preserve the architectural design and style reflecting continuity of the Townhomes with each other and the neighborhood in general. Accordingly, any structural or physical alterations or modifications to the exterior or structure of the Townhomes including without limitation color changes are expressly prohibited. This prohibition includes, but is not limited to, the masonry and wooden partitions, if any, as well as doors, windows, walls, roof lines and fences.

SECTION 29. Noise and Noxious Use.

Nothing shall be done in any Townhome of a noxious or offensive nature, nor shall any outside lighting or loudspeakers or other sound producing devices be used which will interfere with the quiet use and enjoyment of other adjacent Townhome owners. Townhome owners shall be prohibited from using the open areas of the Townhomes for open fires or other unsafe flammable uses except barbecues are permitted in the first floor garden areas of each of the Townhomes, subject to any laws, statutes or ordinances that may be adopted from time to time by the City of Chicago. The interior and exterior of the Townhomes shall be maintained by the owner in a clean, sanitary and attractive condition. The Homeowner's Association shall maintain, cultivate and keep in good condition all trees, grass, shrubs and other landscaping and keep all waste and refuse in covered sanitary containers.

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SECTION 30. Fences, Parkways, Planting, Patio and Exterior Areas.

Any fence, planting and patio areas along or adjacent to the entrance of each Townhome, which lies on any Townhome Owners property shall be maintained by such owner. Further, each owner of a Townhome shall be charged with the obligation of the maintenance of the exterior of said Townhome. A reciprocal easement exists between the Homeowner Association to facilitate said maintenance in the event a Townhome owner fails to properly maintain said fence, parkway, patio or exterior areas.

SECTION 31: General.

To the extent these By-Laws or the General Not For Profit Corporation Act are silent, the meetings of the Board of Directors and the membership shall be governed by the then most recent edition of Robert's Rules of Order.

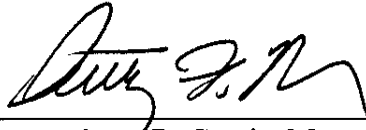
[SIGNATURE PAGES TO FOLLOW]

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the said Developer has caused its name to be signed to these presents on the day and year first above written.

42nd Street Townhomes, LLC

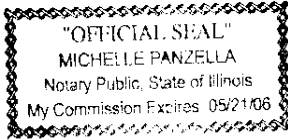


By: Anthony DeGrazia, Manager

State of Illinois)
) SS
County of Cook)

I, Michelle Panzella in and for said County and State, do hereby certify that Anthony DeGrazia, manager of 42nd Street Townhomes, LLC personally known to me to be the same person whose name subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the purposes and therein set forth.

Given under my hand and official seal this 1st day of December, 2004




Notary Public

PREPARED BY AND AFTER RECORDING MAIL TO:
Richard Indyke
221 N. LaSalle St., Suite 1200
Chicago, Illinois 60601

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CONSENT OF MORTGAGEE

The undersigned, Cole Taylor Bank, as holder of a mortgage dated January 8, 2004 encumbering the property recorded in the Office of Cook County Recorder of Deeds on February 13, 2004 as Document Number 0404404121 securing an indebtedness in the principal sum of \$625,000.00 hereby consents to the execution and recording of the above and foregoing Declaration of Townhome and agrees that said mortgage shall be subject and subordinate to said Declaration of Restrictions aforesaid.

By: Daniel C. Nagle
Name: Daniel C. Nagle
Title: V.P.

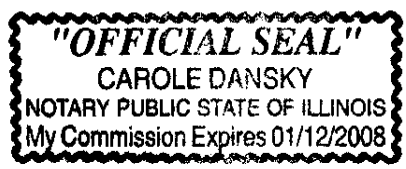
State of Illinois)
)
County of Cook)

SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Daniel C. Nagle, the Vice President of Cole Taylor Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me 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 corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20th day of December, 2004.

Carole Dansky
Notary



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EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

LOTS 1, 2, AND THE EAST 8.50 FEET OF LOT 3 IN BLOCK 9 IN SCOVILLE, OF WALKER AND MCELWEE'S SUBDIVISION OF LOT 2 TO 4 AND SUBLOT 2 IN THE SUBDIVISION OF LOT 6 IN SUPERIOR COURT PARTITION IN THE WEST ½ OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 16.50 FEET OF LOT 3 AND LOTS 4 AND 5 IN BLOCK 9 IN SCOVILLE, OF WALKER AND MCELWEE'S SUBDIVISION OF LOT 2 TO 4 AND SUBLOT 2 IN THE SUBDIVISION OF LOT 6 IN SUPERIOR COURT PARTITION IN THE WEST ½ OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AND 2 DESCRIBED AS FOLLOWS: THE WEST 6.00 FEET OF LOT 2, LOT 3 AND THE EAST 5.90 FEET OF LOT 4 IN BLOCK 9 OF SCOVILLE OF WALKER AND MCELWEE'S SUBDIVISION OF LOT 2 TO 4 AND SUBLOT 2 IN THE SUBDIVISION OF LOT 6 IN SUPERIOR COURT PARTITION IN THE WEST ½ OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3037-3043 WEST 42ND STREET, CHICAGO, ILLINOIS

PIN: 19-01-125-010-0000	19-01-125-011-0000
19-01-125-012-0000	19-01-125-013-0000
19-01-125-014-0000	

EXHIBIT B - PLAT OF SURVEY

PLATS SHOWING EASEMENT AREAS AND INDIVIDUAL PARCELS

EXHIBIT C - 3037 W. 42ND STREET, UNIT 1, CHICAGO, ILLINOIS
 EXHIBIT D - 3037 W. 42ND STREET, UNIT 2, CHICAGO, ILLINOIS
 EXHIBIT E - 3037 W. 42ND STREET, UNIT 3, CHICAGO, ILLINOIS
 EXHIBIT F - 3037 W. 42ND STREET, UNIT 4, CHICAGO, ILLINOIS
 EXHIBIT G - 3037 W. 42ND STREET, UNIT 5, CHICAGO, ILLINOIS
 EXHIBIT H - 3043 W. 42ND STREET, UNIT 1, CHICAGO, ILLINOIS
 EXHIBIT I - 3043 W. 42ND STREET, UNIT 2, CHICAGO, ILLINOIS
 EXHIBIT J - 3043 W. 42ND STREET, UNIT 3, CHICAGO, ILLINOIS
 EXHIBIT K - 3043 W. 42ND STREET, UNIT 4, CHICAGO, ILLINOIS
 EXHIBIT L - 3043 W. 42ND STREET, UNIT 5, CHICAGO, ILLINOIS
 EXHIBIT M - 3043 W. 42ND STREET, UNIT 6, CHICAGO, ILLINOIS
 EXHIBIT N - 3043 W. 42ND STREET, UNIT 7, CHICAGO, ILLINOIS
 EXHIBIT O - 3043 W. 42ND STREET, UNIT 8, CHICAGO, ILLINOIS

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EXHIBIT

ATTACHED TO

21- P²⁶
14 EX

35 - Total

DOCUMENT

SEE PLAT INDEX