

UNOFFICIAL COPY

This instrument was prepared by,
and after recording, return to:

David L. Reifman, Esq.
DLA Piper US LLP
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601



Doc#: 0717234178 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/21/2007 03:24 PM Pg: 1 of 7

For Recorder's use

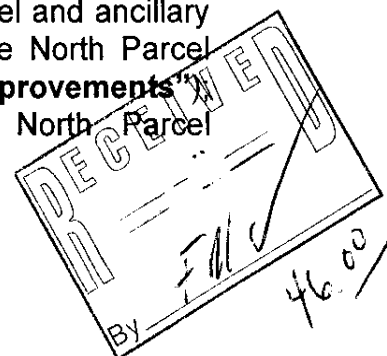
DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (the "Declaration") is made as of the 21st day of June, 2007 by Mather LifeWays, an Illinois Not-for-Profit Corporation ("Mather") and The Georgian, an Illinois Not-for-Profit Corporation ("Georgian", and together with Mather, the "Declarant").

WITNESSETH:

WHEREAS, Georgian is the owner of properties commonly known as 400 Davis Street (the "Southeast Parcel") and 422 Davis Street (the "Southwest Parcel") and Mather is the owner of properties commonly known as 415 Davis Street (the "Northeast Parcel") and 1615 Hinman (the "Northwest Parcel"), collectively located in the City of Evanston, County of Cook, State of Illinois as depicted on the site plan attached hereto as Exhibit A and made a part hereof (the "Subject Property"),

WHEREAS, the City of Evanston (the "City") authorized the Declarant, pursuant to Ordinance No. 5-0-06 (the "Ordinance"), to redevelop the Subject Property with a continuing care retirement community which shall consist of (i) independent living units and underground parking spaces on the Southwest Parcel (hereinafter, the "Southwest Parcel Improvements"); (ii) independent living units on the Northwest Parcel and underground parking spaces on both the Northeast Parcel and Northwest Parcel (collectively hereinafter, the "North Parcel Improvements"); (iii) a tunnel and ancillary utility facilities below the Davis Street right-of way which connects the North Parcel Improvements and the Southwest Parcel Improvements (the "Tunnel Improvements") and such other improvements as identified in Ordinance (the North Parcel



UNOFFICIAL COPY

Improvements, the Southwest Parcel Improvements, the Tunnel Improvements and such other improvements are collectively referred to herein as the “**Total Project Improvements**”);

WHEREAS, Section 10(b) of the Ordinance provides that the Declarant is required to record a restrictive covenant against the Northeast Parcel and the Southeast Parcel, which parcels are legally described on Exhibit B attached hereto and made a part hereof (collectively, the “**Restricted Property**”), and which shall be enforceable by the City.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by the City, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby declares as follows:

1. **Incorporation of Recitals.** The recitals set forth above in this Declaration are hereby incorporated herein by reference.
2. **Restrictive Covenant.** From and after construction of the Total Improvements, and continuing for so long as the Total Project Improvements exist, the Restricted Property shall be maintained and operated as open space in substantial conformance with Development Plan (as such term is defined in the Ordinance) and the Restricted Property shall not contain any above-ground improvements. Notwithstanding anything to the contrary contained herein, the Declarant shall be permitted to: (i) maintain and operate underground parking spaces beneath the surface of the Northeast Parcel; and (ii) maintain and operate on the Restricted Property any and all fixtures and furniture in connection with the use of such Restricted Property as a landscaped garden, including but not limited to one or more, gazebos, trellises, benches and chairs, statues, sculptures or other pieces of artwork, planting beds, planters, fences, and fountains.
3. **Modification or Release.** This Declaration or any provision hereof may only be modified or released as to all or any portion of the Restricted Property upon the action of two-thirds (2/3) of the seated aldermen of the Evanston City Council.
4. **Covenant Running with the Land.** The covenant contained in Section 2 hereof shall be deemed to be a covenant running with the Restricted Property (subject to the terms hereof), shall inure to the sole and exclusive benefit of the City, and shall (subject to the terms hereof) be binding upon the successors and assigns of the Declarant in title to any portion of the Restricted Property, and any lessees or other transferees of any portion of the Restricted Property; provided however, this Declaration shall automatically terminate without any action required from the Declarant or the City, if the Total Project Improvements no longer exist.
5. **Miscellaneous.** This Declaration shall be governed by the laws of the State of Illinois. Section titles or captions contained herein are inserted as a matter of

UNOFFICIAL COPY

convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions hereof. In the event of any conflict or inconsistency between the terms of the Ordinance and the terms of this Declaration, the terms of this Declaration shall control. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity of enforceability of any other term, covenant, condition, provision, or agreement contained herein. Upon any sale, lease or any other transfer of all or any portion of the Restricted Property (other than an assignment or transfer of rights pursuant to a mortgage or otherwise as collateral for any indebtedness), such purchaser, lessee or other transferee shall be deemed to have assumed the covenants and obligations in this Declaration and thereafter the restriction contained in this Declaration shall be deemed to apply to and bind the transferee thereof (and its beneficiaries if such transferee is a land trust) and the applicable portion of the Restricted Property.

[signature page follows]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above written.

Mather:

Mather LifeWays, an Illinois Not-For-Profit Corporation

By: Mary Leary
Name: MARY LEARY
Its: President

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared Mary Leary, to me personally known as the President of MATHER LIFEWAYS, an Illinois Not-For-Profit Corporation, who acknowledged her execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and notarial seal this 21st day of June, 2007.



Beth Harrington

Georgian:

The Georgian, an Illinois Not-for-Profit Corporation

By: Mary Leary
Name: MARY LEARY
Its: President

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared Mary Leary, to me personally known as the President of THE GEORGIAN, an Illinois Not-for-Profit Corporation, who acknowledged her execution of the foregoing instrument for and on behalf of said corporation by authority of its Board of Directors.

WITNESS my hand and notarial seal this 21st day of June, 2007.



Beth Harrington

UNOFFICIAL COPY

EXHIBIT A

SITE PLAN

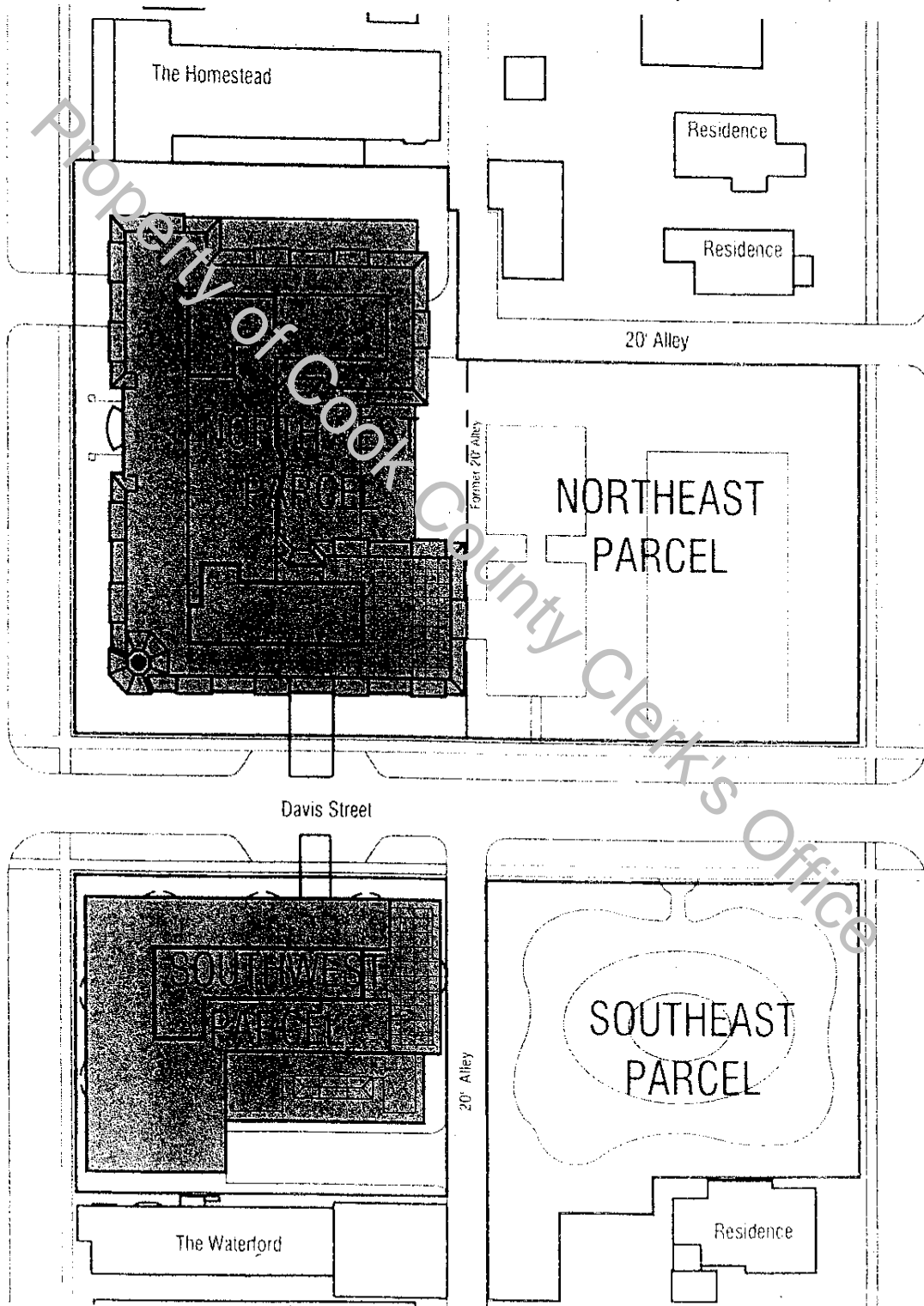
[Attached]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

SITE PLAN



UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION OF THE RESTRICTED PROPERTY

LOTS 1, 2 AND 3 IN HARVEY T. WEEKS RESUBDIVISION OF LOTS 10, 11 AND THE SOUTH 43 FEET OF LOT 12 OF BLOCK 21 IN VILLAGE OF EVANSTON IN SECTIONS 13, TOWNSHIP 41 NORTH, RANGE 13 AND 7, 18 AND 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOTS 1, 2, AND 3 IN BLOCK 25 IN EVANSTON IN THE SOUTHEASTERLY FRACTIONAL QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THE SOUTHERLY 60 FEET OF THE EASTERLY 103 FEET OF LOT 3 AND EXCEPTING THAT PART FALLING WITHIN THE SOUTHERLY 42 FEET OF THE WESTERLY 46 FEET OF THE EASTERLY 149 FEET OF LOT 3) IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office