



Doc#: 0929645064 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/23/2009 11:12 AM Pg: 1 of 8

AGREEMENT

THIS AGREEMENT ("Agreement") is made as of this 11 day of October, 2009 between the **813 - 815 Forest Avenue Condominium Association**, an Illinois not-for-profit corporation ("Association") and **Daniel and Marcie Koscher** (collectively, "Owner").

WHEREAS, the property described on Exhibit A hereto and commonly known as 813 - 815 Forest Avenue, Evanston, Illinois (the "Property") was submitted to the provisions of the Illinois Condominium Property Act pursuant a Declaration of Condominium Ownership recorded with the Office of the Recorder of Deeds of Cook County on January 5, 1989 as Document No. 89-005988.

WHEREAS, Owner is the owner of Unit #3 (the "Unit") in the 813 - 815 Forest Avenue Condominium Association located in part at 815 Forest Avenue, Evanston, Illinois, 60202.

WHEREAS, Owner has requested the Association's approval for alterations and additions in, on and to the rooftop Limited Common Elements appurtenant to Unit #3 including construction of a HVAC System ("HVAC System"), all as is more fully described in City of Evanston Permit Application No. 09KITB-0190 (collectively, the "Work").

WHEREAS, the Association is agreeable to approving the Work upon the terms and conditions set forth in this Agreement.

Now, therefore, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Association and Owner agree as follows:

THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING RETURN TO:

TREV M. MINNAERT
ARNSTEIN & LEHR LLP
120 S. RIVERSIDE PLAZA, SUITE 1200
CHICAGO, IL 60606-3910

COMMON ADDRESS

815 Forest Avenue
Unit #3
Evanston, IL 60202

PIN: 11-19-404-032-1003

1. **Approval for the Work.** The Association hereby approves the Work subject to the terms and conditions set forth in this Agreement, including but not limited to, (a) the approval of the make, model and size of the HVAC System equipment prior to Owner purchasing such HVAC System Equipment or entering into a contract for same; and (b) the approval of the method of installation and placement of the HVAC System.

DMK

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2. **Structural Load.** In order to ensure that the building and its roof are not subjected to excessive loads, Owner shall, prior to commencing the Work, provide the Association, at Owner's sole cost and expense, with a written report prepared by a licensed structural engineer acceptable to the Association confirming that the building and its roof can safely support the structural loads associated with the proposed HVAC System.

3. **Conditions.** Additionally, prior to commencement of the Work, the Owner shall furnish to the Association, the following:

- a. Schedule of all Work to be performed;
- b. The names and addresses of all contractors, subcontractors and material suppliers performing the Work and the general contractor's sworn statement;
- c. Copies of all contracts relative to the performance of the Work;
- d. Copies of all licenses and permits (including building permits) required in connection with the performance of the Work; and
- e. Certificates of insurance as described further in **Section 10** of this Agreement.

4. **Cooperation.** Owner agrees to cooperate and comply with the Association's plan regarding: the location of improvements by other owners on the common elements (set back lines), drainage, and location of air equipment on the roof of the condominium building (such air conditioning and air handling equipment), and to share in the equitable distribution (as determined by the Board of Directors of the Association) of any costs related to drainage or relocation of air conditioning and other equipment necessitated by the cumulative development of various portions of the common element roof.

5. **Governmental Approvals.** Owner is solely responsible for obtaining and maintaining all permits, certificates and approvals required in connection with the Work and the HVAC System, and Owner shall promptly pay all taxes, fees and other sums imposed by any governmental agency or authority in connection with the Work. If any zoning approvals or an amendment to local historic preservation ordinance or an amendment to local zoning ordinance is required in connection with the Work, Owner shall pay any costs and expenses in connection with any such approval or amendment.

6. **Performance of Work.**

- a. The Owner agrees to have the Work performed in a proper and workmanlike manner in accordance with the Association's standards and requirements, and subject to inspection by the Board of Directors of the Association.
- b. The Owner agrees to complete the Work within thirty (30) days after execution of this Agreement; additional time to complete the Work may be granted to Owner with Association approval. In the event the Owner fails to complete the Work within the required timeframe, or if the Board of Directors of the Association does not approve the Work, then the Owner shall allow the Association's own Contractor to correct and complete the Work all at the Owner's expense.
- c. The Owner agrees that the Work shall only be performed on weekdays between the hours of 8:00 a.m. and 5:00 p.m.
- d. Owner shall not allow its contractor to store construction equipment and materials in or on any common elements of the Association.

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7. **Maintenance, Repair and Replacement of HVAC System.** Owner shall at all times and at Owner's sole cost and expense keep the HVAC System in a clean, safe and well-maintained condition, including but not limited to, proper sound and vibration insulation. Owner shall, whenever reasonably necessary, promptly repair, replace or remove the HVAC System, at Owner's sole cost and expense. Owner shall have sole responsibility for the condition of the HVAC System and their compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees. If the Owner fails to perform any maintenance, repair, replacement or restoration, or fails to maintain proper insurance coverages, or fails to carry out any of the Owner's obligations under this Agreement, and fails to correct such failure within five (5) days after written notice from the Association so to do (or immediately upon demand in cases of emergency), then the Association shall have the right, but not the obligation, to perform any all such work and the Owner hereby agrees to be liable for any and all expense of such work (including, but not limited to, professional and attorneys' fees), which expense shall be a lien against the Unit.

8. **Association's Access.** Owner shall at all times provide Association with reasonable access to the HVAC System whenever necessary for maintenance, repair or replacement of the building's roof or other common elements.

9. **Restoration.** The Owner agrees that, in the event that (a) the HVAC System is removed or no longer permitted due to law, municipal or governmental regulation or judicial order, or (b) the Association terminates this Agreement, the Owner shall be solely and fully responsible for the cost of removal of the HVAC System and all expense to restore the area of the Work to its pre-existing condition.

10. **Additional Insurance Costs.** The Owner shall cause the contractor installing the HVAC System to maintain the following types of insurance coverage: (a) worker's compensation insurance providing statutory benefits and limits which shall fully comply with all State and Federal requirements applying to this insurance, and Employer's Liability Insurance with limits of at least five hundred thousand dollars and no/100 (\$500,000.00) per accident or disease or five hundred thousand dollars and no/100 (\$500,000.00) in the aggregate per accident or disease; and (b) Commercial General Liability Insurance, including coverage for premises/operations, independent contractor, completed operations, contractual liability and personal and advertising injury liability with combined single limits of at least two million dollars and no/100 (\$2,000,000.00) per occurrence for bodily injury and property damage. Such policies shall stipulate that such insurance is primary to, and not contributing with, any insurance carried by, or for the benefit of, Owner. Additionally, such policies shall name the Owner, the 813 - 815 Forest Avenue Condominium Association, its officers, directors, unit owners, agents and assigns as additional insureds.

The Owner agrees that the cost of any insurance (or additional insurance coverage) required for or related to the Work or the HVAC Systems will be the responsibility of the Owner exclusively and not the common expense of the Association. The Owner shall provide the Association with proof of such coverage by way of certificates of insurance which shall provide that no change in coverage shall be made without 30 days prior written notice to the Association.

11. **Indemnification.** Owner shall indemnify and hold Association harmless from and against the following, which shall in each instance include reasonable attorneys' fees and costs: (a) any damage to any part of the Common Elements or any unit caused by the Work or Owner's use of the HVAC System, (b) any claim or demand by any person or entity, whether unit owner, guest or invitee, for personal injury or property damage, or claim of any other nature arising from the Work or use of the HVAC System, and (c) any claim or demand by any governmental authority, including the local historic preservation authority, with respect to the Work or use the HVAC System, including failure to comply with any applicable building or zoning laws, ordinances, fire codes, rules or regulations.

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12. **Notices.** All notices and approvals to be given by one party to the other party under this Agreement shall be given in writing, mailed or delivered as follows:

(a) To Owner:

Daniel and Marcie Koscher
3731 NE 31st Avenue
Lighthouse Point, FL 33064

or to such other person at such other address designated by notice sent to Association.

(b) To Association:

813-815 FOREST AVENUE CONDOMINIUM ASSOCIATION
Attn: President
813-2 Forest Avenue
Evanston, IL 60201

With a copy to:

ARNSTEIN & LEHR LLP
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60603-3910
Attn: Trev M. Minnaert, Esq.

or to such other person at such other address designated by notice sent to Owner.

13. **Agreement Binding on Future Owners of Unit.** The Association and Owner agree that the covenants contained in this Agreement are covenants running with the land and are intended to bind the parties and their successors in title and interest. All terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of Owner, and each of Owner's successors and assigns as owner of the Unit.

14. **Applicable Law.** This Agreement will be governed, construed and interpreted in accordance with the laws and decisions of the State of Illinois, United States of America, without regard to conflict of law principles that would require the law of another state, jurisdiction or country to be applied.

15. **Jurisdiction.** Owner and Association irrevocably agree and hereby consent and submit to the non-exclusive jurisdiction of the Circuit Court of Cook County, State of Illinois, United States of America and the United States District Court for the Northern District of Illinois, Eastern Division, with regard to any actions or proceedings arising from, relating to or in connection with this Agreement.

16. **Venue.** Owner and Association each waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of Cook County, State of Illinois, United States of America, or the United States District Court for the Northern District of Illinois, Eastern Division.

17. **Severability.** If any provision contained in this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed herefrom and such invalidity or unenforceability will not affect any other provision of this Agreement, the balance of which will remain in and have its intended full force and effect; provided, however, if said invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

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18. **No Waiver.** Association's failure to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right granted herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

19. **Exhibits.** The Exhibits referred to in this Agreement are attached hereto, made a part hereof and are incorporated herein by this reference.

20. **Headings.** The numbers, headings, titles or designations of the various paragraphs or sections are not a part of this Agreement, but are for convenience of reference only, and do not and will not be used to define, limit or construe the contents of the paragraphs or sections.

21. **Pronouns.** Whenever required by context, the masculine pronouns will include the feminine and neuter genders, and the singular will include the plural and vice versa.

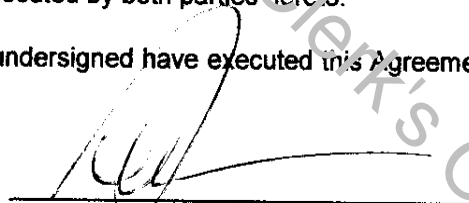
22. **Prevailing Party.** In any litigation or arbitration between the parties hereto, the prevailing party thereunder shall be entitled to receive reimbursement from the non-prevailing party for all costs and expenses, including reasonable attorneys' fees, incurred in such litigation or arbitration. The term "prevailing party" shall mean that party whose position is substantially upheld in the arbitration or in a final judgment rendered in such litigation (as the case may be), or, if the final judgment is appealed, that party whose position is substantially upheld by the decision of the final appellate body to consider the appeal.

23. **WAIVER OF JURY TRIAL.** OWNER AND ASSOCIATION HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY.

24. **Recording.** The parties agree that this Agreement shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

25. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, not contained in this Agreement shall be of any force and effect. This Agreement may not be modified in whole or in part other than by an instrument duly executed by both parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

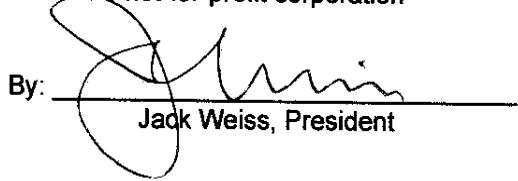


Daniel Koscher



Marcie Koscher

813 - 815 Forest Avenue Condominium Association,
an Illinois not-for-profit corporation

By: 

Jack Weiss, President



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Exhibit 1
(Legal Description)

UNIT NUMBER 815-3 IN THE 813 - 815 FOREST AVENUE CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED PARCEL, OF REAL ESTATE: LOT 9 IN BLOCK 8 IN WHITE'S ADDITION TO EVANSTON IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED JANUARY 5, 1989 AS DOCUMENT NUMBER 89005988, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

COMMON ADDRESS: 815 FOREST AVENUE, #3, EVANSTON, IL 60202

PIN: 11-19-404-032-1003



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State of Florida)
)SS
County of ~~Broward~~)
Palm Beach

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that Daniel Koscher and Marcie Koscher, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the same instrument as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 19 day of October, 2009.

Susan B. Samuels

Notary Public

NOTARY PUBLIC STATE OF FLORIDA
Susan B. Samuels
Commission #DD748181
Expires: APR. 04, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

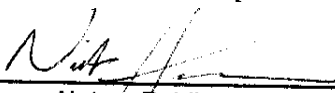
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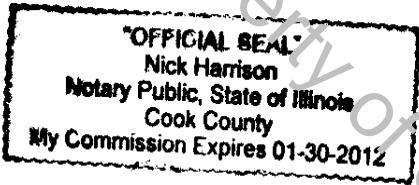
State of Illinois)
)SS
County of Cook)

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that Jack Weiss, the President of the 813 - 815 Forest Avenue Condominium Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the same instrument as his own free and voluntary act, and the free and voluntary act of said Association, for the uses and purposes therein set forth.

Given under my hand and seal this 20 day of October, 2009.



Notary Public



Property of Cook County Clerk's Office