

WISA 245782 - PK

This Document Prepared by and After recording return to:

Thomas S Moore
Anderson & Moore, P.C.
111 West Washington, Suite 1100
Chicago, IL 60602



Doc#: 1034835021 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/14/2010 09:59 AM Pg: 1 of 9

JFZ

DECLARATION OF INGRESS/EGRESS EASEMENT

This Declaration of Ingress/Egress Easement (the "Declaration") is made as of October 21, 2010 by Fairview Development Group, LLC, an Illinois limited liability company, whose address is 4732 N. Austin, Chicago, Illinois 60630 (hereinafter "Declarant").

RECITALS:

A. Declarant is the record owner of the real estate located in the City of Chicago, County of Cook, State of Illinois, which real estate is commonly known 4732 N. Austin Ave., 4752 N. Austin Ave., 6015 W. Lawrence Avenue, 6019 W. Lawrence Ave. and 6021 W. Lawrence Avenue all located in Chicago, and which real estate is legally described on Exhibit "A" attached hereto and by this reference incorporated herein ("Parcel A").

B. Parcel A consists of five separate lots namely Lots 1, 2, 3, 4 and 5 all as legally described on Exhibit A.

C. Declarant intends to construct for the benefit of Parcel A and all owners and their successor and assigns, a driveway to provide access to Lots 1, 2, 3, 4 and 5 ("Driveway") and further desires to grant and declare for the benefit of Lots 1, 2, 3, 4 and 5, a mutual non exclusive ingress and egress easement over, upon and across that certain portion of Parcel A legally described in the attached Exhibit B on which the driveway will be constructed (the "Easement Area").

NOW, THEREFORE, the Declarant does hereby declare as follows:

1. Recitals. The foregoing recitals are hereby incorporated in and made a part of this Declaration.

2. Grant of Easements. Declarant hereby grants, gives and conveys subject to the terms, provisions and conditions contained in this Declaration:

S
P
S
S
IN

2010 12-14-10

UNOFFICIAL COPY

(a) to the owners of Lots 1, 2, 3, 4 & 5, their successors and assigns, a non-exclusive perpetual easement on, over and across the I/E Easement Area for vehicular and pedestrian ingress and egress between Lots 1, 2, 3, 4 and 5 and Austin Avenue, but only with respect to vehicular and pedestrian ingress and egress associated with and directly related to the use of Lots 1, 2, 3, 4 and 5.

(b) to the owner of Lot 1 and its successors and assigns, a non-exclusive perpetual easement on, over and across the I/E Easement Area to, from time to time, construct, install, maintain, operate, repair, protect, remove and replace concrete, asphalt and such other materials as shall be necessary or advisable for the purpose of maintaining a driveway and providing access to Lots 1, 2, 3, 4 and 5.

3. Construction of Driveway.

(a) The Lot 1 and Lot 2 Owner shall be responsible for the initial construction of the Driveway for the benefit of the Lots 1, 2, 3, 4 & 5 and shall jointly select a subcontractor to construct the Driveway in accordance with any plans and specifications approved by the City of Chicago and within the I/E Easement Area.

(b) The costs to construct and install the driveway proportionately as follows: Phase I - Lot 1 - 30.5%; Lot 2 - 27.5%; Lot 3 - 14%; Lot 4 - 14%; and, Lot 5 - 14%; Phase II and Phase III - Lot 1 - 50% and Lot 2 50%, Phase IV - Lot 3 - 33 1/3%, Lot 4 - 33 1/3% and Lot 5 - 33 1/3%. Notwithstanding the foregoing, the owners have created an escrow account and payment shall be disbursed from the escrow account in the following stages: (1) \$10,500.00 from the Lot 2 Owner and \$10,500 collectively from the owner of Lots 1, 3, 4 & 5 (collectively referred to herein as "Multiple Lot Owner") when the sewer is connected to the street, (2) \$4,158.00 from the Lot 1 Owner and \$10,692.00 from the Multiple Lot Owner when asphalt is completed, (3) \$7,333.00 from the Lot 1 Owner and the Multiple Lot Owner when the asphalt for the shared driveway is completed, (4) \$388.00 from the Lot 1 Owner and \$872.00 from the Multiple Lot Owner when the common sidewalk is completed, and (5) \$170.00 from the Lot 1 Owner and \$430.00 from the Multiple Lot Owner when the curb on the street is completed. Any payments not made within fifteen (15) days of the completion of each stage of work shall bear interest at the rate of 12% per annum for any portion thereof which remains unpaid.

4. Maintenance, Repair and Replacement of the Driveway. Upon completion of the construction and installation of the Driveway in accordance with the terms of this Declaration, the Lot 2 Owner shall be responsible for maintaining and repairing the Driveway in good and workable condition at the collective cost and expense of the owners of Lots 1, 2, 3, 4 and 5 as follows: Lot 2 Owner - 50% and the owners of Lots 1, 3, 4 & 5 - collectively 50% ("Proportionate Share"). Payment shall be due within fifteen (15) days of the Lot 2 Owner providing to the other owners of Lots 1, 3, 4 and 5 (i) a breakdown of the costs and expenses incurred in the construction of the Driveway and (ii) sworn statements, receipts and lien waivers for labor and materials covering the date of payment of the construction costs. Any payment not received within fifteen (15) days shall bear interest at the rate of 12% per annum for any portion thereof which remains unpaid.

UNOFFICIAL COPY

5. Submission to Illinois Condominium Property Act. In the event any portion of the Parcel A is submitted to the Condominium Act and/or so long as such portion of Parcel A is subject to the provisions of the Condominium Act, all rights, easements and benefits under this Declaration appurtenant to or enjoyed by that portion of Parcel A shall be exercised by the condominium association established on behalf of the unit owners in such portion of Parcel A, except for such rights, benefits or liabilities expressly granted or imposed on unit owners hereunder. Any action to enforce rights, obligations, easements, burdens and benefits under this Declaration on behalf of unit owners of any portion of Parcel A submitted to the Condominium Act, shall be taken on behalf of the applicable unit owners solely by the applicable Association by its duly authorized officers acting pursuant to authority granted by law and the condominium declaration.

6. Dedication. If any governmental authority having jurisdiction over the Ingress/Egress Easement shall require the dedication of the Driveway or Ingress/Egress Easement to such governmental authority or to a utility company, the owners of Parcel A shall take such steps and execute such documents as shall be necessary to so dedicate the Driveway and Ingress/Egress Easement.

7. Liens, Debts, Interest and Remedies.

(a) Failure to Perform. If, at any time, any owner of a portion of Parcel A fails within fifteen (15) business days after notice or demand to pay any sum of money due hereunder ("Defaulting Owner"), then, in addition to any other rights or remedies the owner owed funds hereunder ("Creditor Owner") may have, the Creditor Owner shall have a lien and the right to record a lien against the portion of the Parcel A or the specific lot owned by the Defaulting Owner. Such lien shall arise immediately upon the recording of a notice by the Creditor Owner with the Cook County Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. Such liens shall continue in full force and effect until such sum of money and any accrued interest due thereon shall have been paid in full. A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Building or property owned by the Defaulting Owner, except a Prior Lien. A "Prior Lien" means a Mortgage which has been recorded against the Building or Property prior to the time of recording of the Creditor Owner's notice of lien, including, a mortgage or trust deed against a Unit.

(b) No Diminution of Lien.

(i) No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this Paragraph 7) shall in any way affect or diminish any lien arising pursuant to this Paragraph 7, and any lien which would have arisen against any property pursuant to this Paragraph 7 had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this Paragraph 7) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

UNOFFICIAL COPY

(ii) If at any time any owner as a Creditor Owner has recorded a notice of lien under Section 7(a) of this Declaration against a portion of Parcel A, which lien has not been foreclosed, released, or satisfied in full, and if such portion of the property or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such portion of the property or part or interest the lesser of (a) an amount sufficient to satisfy that portion of the unpaid amount due and (b) the entire proceeds from the sale, minus any amount paid to satisfy the Prior Lien. Following any such sale, the Creditor Owner, shall continue to have (x) a lien on the Defaulting Owner's portion of the Property and (y) the rights with respect to the proceeds of any subsequent sales of such Defaulting Owner's portion of the Property, as provided in this Paragraph 7, to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Defaulting Owner's portion of the Property. Further, if at any time after any portion of Parcel A has been submitted to the Illinois Condominium Property Act, and if a Creditor Owner has recorded a notice of lien under Section 7(a) of this Declaration against a unit of in a condominium, which lien has not been foreclosed, released, or satisfied in full, and if such unit of a condominium is thereafter sold, then the Creditor Owner, shall be entitled to receive from the proceeds of sale of such unit the lesser of (a) an amount sufficient to satisfy that portion of the unpaid Default Amount for which such unit owner is liable, and (b) the entire proceeds from the sale of such unit, minus any amount paid to satisfy the Prior Lien on such unit. The Creditor Owner shall notify the applicable condominium association of the recordation, foreclosure, release or satisfaction of liens against units in the condominium. The Association shall notify the Creditor Owner in advance of any sale of a unit known to the Association against which such lien exists.

(c) Mortgagee's Subrogation. The holder of a mortgage or trust deed on all or any portion of the Residential Property or on all or any portion of the Commercial Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Paragraph 7 affecting the property secured by its mortgage upon payment of the amount secured by such lien.

(d) Cumulative Remedies. The rights and remedies of an owner provided for in this Paragraph 7 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such owner may be entitled at law or in equity or by statute. An owner may enforce, by a proceeding in equity for mandatory injunction, another owner's obligation to execute or record any document which such other owner is required to execute under or pursuant to this Declaration. The exercise by such owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or at law and equity; provided, however, no owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from the other owner as a result of any breach by the other owner of its obligations under this Declaration.

(e) No Set Off. Each claim of any owner arising under this Declaration shall be separate and distinct, and no defense, setoff, offset or counterclaim arising against the enforcement of any lien or other claim of any owner shall thereby be or become a

UNOFFICIAL COPY

defense, setoff, offset or counterclaim against the enforcement of any other lien or claim.

(f) Period of Limitation. Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute.

(g) Attorneys' Fees. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.

(h) Self-help. Without limiting any other rights or remedies of an owner, including any other self-help provision of this Declaration which grants an owner the right to perform an obligation which the other owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the owner in performing such obligation which the Defaulting Owner has failed to perform. Notwithstanding the foregoing, in the event the Defaulting Owner would have been entitled to reimbursement from other for the any sums owing under this Section 7(h), the Creditor Owners shall look to the other owners for payment of such sums.

8. General Matters.

(a) Except as expressly granted herein, the owner(s) of Parcel A retains all rights as owner of the I/E Easement Area, including the right to use such areas for all purposes not inconsistent herewith. In addition, the Declarants and their successors and assigns shall have the full right and authority to maintain on Parcel A until January 1, 2012, advertising signs, parking facilities, banners, construction equipment, construction materials and lighting in connection with the sales promotion and construction of improvements on Parcel A, together with the right of ingress to and egress from Parcel A and all improvements constructed or locate thereon. Notwithstanding the foregoing, if the then owners of Lots 1, 2, 3, 4 & 5 are engaging in construction of the improvements to their applicable lot and provided the then owners adequately fence the lots with appropriate fencing including wind screens, such owners shall be allowed to have construction equipment, construction materials and lighting in and upon Parcel A. In the event that any Owner of any Lot fails to comply with the provisions of Paragraph 8(a) said unit owner shall be subject to a fine of \$5,000.00 per occurrence.

(b) The Lot 1 Owner in conjunction with the owner(s) of Lots 2, 3, 4 and 5 shall at all times keep in full force and effect, on a fully paid-up basis, a Policy of Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability, and specifically covering the use and enjoyment of the I/E Easement. The allocable cost to the owners of each lot shall

UNOFFICIAL COPY

be based on the Proportionate Share set forth hereinabove.

(c) No owner of Parcel A shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as nonperformance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, flood, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereinafter in this Article the "Non-Performing Owner") shall notify the other owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing owner shall, from time to time upon written request of the other owner, keep such other owner fully informed in writing, of all further developments concerning any such Unavoidable Delay.

(d) This Declaration shall be governed by the laws of the State of Illinois. If any term or provision of this Declaration or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby and shall be enforceable to the fullest extent permitted by law. This Declaration shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, agents, personal representatives, lessees, sublessees, successors and assigns, and shall continue as a servitude running with the land in perpetuity unless and until terminated. Whenever a transfer of ownership of Parcel A takes place, the transferor shall have no liability for any breach of this Declaration occurring after the date of such transfer. Said Transferee shall automatically assume and be bound by these burdens and obligations running with the land to the owner of the parcel or portion thereof being transferred.

(e) Each respective Unit Owner shall be responsible to properly maintain its Property including but not limited to proper landscaping, upkeep of the common areas, snow removal, and other necessary steps that a reasonable person would take to properly maintain the property. In the event that any Owner of any Lot fails to comply with the provisions of this Paragraph 8(e), said Unit Owner shall be subject to a fine of \$1,000.00 per occurrence

9. Enforcement. Any owner of Lot 1, 2, 3 4 and 5 may enforce this instrument pursuant to the terms set forth herein.

10. Amendment. This Declaration may be terminated or amended only by a written amendment signed by each of owners of all of Parcel A or their respective successors or assigns, and shall become effective upon the recordation of such amendment in the Office of the Recorder of Deeds of Cook County, Illinois. Notwithstanding the foregoing, the owner of any portion of Parcel A submitted to the Condominium Act shall be deemed to be the Association for the applicable parcel.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

DECLARANT: **FAIRVIEW DEVELOPMENT GROUP, LLC**, an Illinois limited liability company

By: *[Signature]*

Name: Patrick J O'Donnell

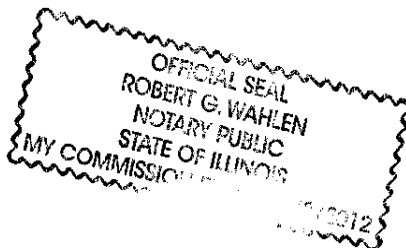
Title: manager manager

STATE OF ILLINOIS)
COUNTY OF COOK)

I, *the undersigned*, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that *Patrick J O'Donnell*, being the manager of Fairview Development Group, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, manager appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as a free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notary seal on 21 October, 2012

[Signature]
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION - PARCEL A

Lots 1, 2, 3, 4 and 5 in Lawrence and Austin Subdivision recorded September 28, 2007 as Document 0727110039 being a subdivision of the east ½ of the northwest ¼ of Section 17, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known as: 4752 N Austin Avenue (Lot 1)
4732 N Austin Avenue (Lot 2)
6015 W Lawrence Avenue (Lot 3)
6019 W Lawrence Avenue (Lot 4)
6021 W Lawrence Avenue (Lot 5)
all in Chicago, Illinois.

PINS: 13-17-105-109-0000
13-17-105-110-0000
13-17-105-111-0000
13-17-105-112-0000
13-17-105-113-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION - I/E EASEMENT AREA

That part of Lots 1, 2,3, 4 and 5 in Lawrence & Austin Subdivision, being a Subdivision of the East ½ of the Northwest ¼ of Section 17, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Southeast corner of said Lot 2;
 Thence North 00°24'20" West, along the East line of said Lot 2,
 A distance of 90.55 feet to the point of beginning;
 Thence North 89°50'22" West, a distance of 129.08 feet;
 Thence South 00°00'00" West, a distance of 34.12 feet;
 Thence North 90°00'00" West, a distance of 119.24 feet;
 Thence North 00°00'00" East, a distance of 22.00 feet;
 Thence South 90°00'00" East, a distance of 99.24 feet;
 Thence North 00°00'00" East, a distance of 40.00 feet;
 Thence North 90°00'00" West, a distance of 108.00 feet;
 Thence North 01°32'36" East, a distance of 23.68 feet;
 Thence North 88°14'20" East, a distance of 150.14 feet;
 Thence South 00°21'01" East, a distance of 34.23 feet;
 Thence South 89°50'22" East, a distance of 106.00 feet;
 Thence South 00°24'20" East, a distance of 22.00 feet to
 The point of beginning, in Cook County, Illinois.

Commonly Known as: 4752 N Austin Avenue (Partial Lot 1)
 4732 N Austin Avenue (Partial Lot 2)
 6015 W Lawrence Avenue (Partial Lot 3)
 6019 W Lawrence Avenue (Partial - Lot 4)
 6021 W Lawrence Avenue (Partial - Lot 5)
 all in Chicago, Illinois.

PINS: 13-17-105-109-0000
 13-17-105-110-0000
 13-17-105-111-0000
 13-17-105-112-0000
 13-17-105-113-0000