

(1 of 5)  
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This instrument was prepared by: *+*  
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Doc#: 1226112075 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/17/2012 10:43 AM Pg: 1 of 10

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND PARTY WALL RIGHTS**

This Declaration of Covenants, Conditions, Easements and Party Wall ("Agreement") is hereby entered into on August 27, 2012, by and between Stanislaw Lopuski and Mariola Lopuski owners of 4424 N. Kilbourn, Chicago, Illinois 60630 here called ("4424 Owners"), and Stanislaw and Mariola Lopuski, owners of 4426 N. Kilbourn, Chicago, Illinois 60630 hereinafter called ("4426 Owners") and

WITNESSETH as follows:

**WHEREAS**, 4424 Owners are the owners of a parcel of land in the City of Chicago, County of Cook and State of Illinois, commonly known as 4424 N. Kilbourn, Chicago, Illinois 60630 and legally described as stated on Exhibit "A" ("4424 Owners' Property"); and

**WHEREAS**, 4426 Owners are the owners of a parcel of land that is adjacent to the 4424 Owners' Property, commonly known as 4426 N. Kilbourn, Chicago, Illinois 60630 and legally described as stated on Exhibit "A" ("4426 Owners' Property"); and

**WHEREAS**, 4424 Owners use the 4424 Owners' Property for residential purposes and 4426 Owners use the 4426 Owners' Property for residential purposes; and

**WHEREAS**, there currently exists a two car residential garage structure at the rear of the 4424 Owners' Property and there currently exists a two car residential garage structure at the rear of the 4426 Owners' Property, which garage structures are immediately adjacent to each other and have a common wall ("Party Wall") which exists along the lot line of the 4424 Owners' Property and the 4426 Owners' Property; and

**WHEREAS**, there currently exists a private driveway ("Driveway") that straddles the lot line between the 4424 Owners' Property and 4426 Owners' Property and which provides access to the aforesaid garages; and

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C.T.I.C. 8894127 D2 KARSA

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WHEREAS, 4424 Owners and 4426 Owners desire to operate and maintain the Driveway and to allow full use of the Driveway by providing each other with reciprocal easements in the locations shown ~~on the diagram attached hereto~~ as Exhibit "B"; and

WHEREAS, 4424 Owners and 4426 Owners did grant each other mutual easements to use the Driveway, and did record the respective Easements with the Cook County Recorder of Deeds on February 21, 2007 as Document Number 0705215094 and 0705215095 respectively ("Existing Easements"). ~~See Existing Easement attached hereto as Group Exhibit "C"; and~~

WHEREAS, 4424 Owners and 4426 Owners further seek to define the rights and responsibilities of the parties regarding the Party Wall and to memorialize same in writing; and

NOW, THEREFORE, in consideration of payment of Ten and No/100 Dollars, the covenants, terms, and conditions to be made, performed, kept and observed by the parties hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, 4424 Owners and 4426 Owners hereby agree as follows:

## Section 1. SHARED DRIVEWAY AGREEMENT

### 1.1 Conveyance of easement

In furtherance of the Existing Easements, 4424 Owners hereby grant unto 4426 Owners a perpetual easement for the right and privilege to use the Driveway and to access that portion of the Driveway that is located on the 4424 Owners' Property as depicted in Exhibit B. This grant of easement ("4424 Easement") is made by 4424 Owners and accepted by 4426 Owners pursuant to the following terms and conditions as set forth hereinafter:

In furtherance of the Existing Easements, 4426 Owners hereby grant unto 4424 Owners a perpetual easement for the right and privilege to use the Driveway and to access that portion of the Driveway that is located on the 4426 Owners' Property as depicted in Exhibit B. This grant of easement ("4426 Easement") is made by 4426 Owners and accepted by 4424 Owners pursuant to the following terms and conditions as set forth hereinafter:

### 1.2 Term

The term of this Agreement shall be in perpetuity, and shall commence as of the date first hereinabove written.

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## 1.3 Driveway Purposes

“Driveway purposes” as used in this agreement means any use of a residential driveway, and it is agreed that no vehicles of more than 48,000 pounds shall use or travel across the right of way described above. Parking on the Driveway, or interfering with the use of the Driveway, in any way, is prohibited.

## 1.4 Construction and maintenance

- A) The driveway described above shall be constructed and maintained in good repair by both parties equally.
- B) Damage As a Result of Fault of One Party: Notwithstanding anything contained herein to the contrary, if any damage to the Driveway is caused by a party to this Agreement (“Responsible Party”) or by an invitee, licensee or guest of such party, the Responsible Party shall bear the sole cost of the replacement/repair of the damaged area of the Driveway. Should the Responsible Party not begin repair/replacement of the damaged area within thirty (30) calendar days of the discovery of such damage, the party not responsible for the damage (“Non-Responsible Party”) may, at any time thereafter, issue a written demand to the Responsible Party to repair/replace the damaged area within seven (7) days of the written notice. Should the Responsible Party not begin work to repair/replace the damaged area within seven (7) days of receiving written notice from the Non-Responsible Party, or should the Responsible Party not diligently prosecute such work to completion, the Non-Responsible Party may at his/her/their sole discretion repair/replace the damaged area, and the Responsible Party shall bear all costs thereof.
- C) Emergency Repairs and Mutual Upkeep: Should the Driveway need emergency repairs and/or need to be repaired/replaced due to no fault of either party to this Agreement, the parties will split the cost of repair/replacement equally.
- D) Any repairs/replacement/construction to the Driveway must be approved in writing by both parties to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed, and all proper permits and plans must be obtained if applicable.

## 1.5 Easement to run with land

The grant of easements referred to hereinabove (i.e. 4424 Easement and 4426 Easement) and the Existing Easements shall run with the land and shall be binding and inure to the benefit of the parties to this Agreement, their heirs, successors or assigns and the owners, from time to time of the 4424 Owners’ Property and the 4426 Owners’ Property.

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## Section 2. SHARED GARAGE PARTY WALL

### 2.1 Construction and maintenance

- A) The Party Wall described above shall be constructed and maintained in good repair by both parties equally.
- B) Damage As a Result of Fault of One Party: Notwithstanding anything contained herein to the contrary, if any damage to the Party Wall is caused by a party to this Agreement ("Responsible Party"), or by an invitee, licensee or guest of such party, the Responsible Party shall bear the sole cost of the replacement/repair of the damaged area of the Party Wall. Said damage shall include, but not be limited to, damage caused by structural modifications or damage to the garage roof, concrete pad and/or other garage walls. Should the Responsible Party not begin repair/replacement of the damaged area within thirty (30) calendar days of the discovery of such damage, the party not responsible for the damage ("Non-Responsible Party") may, at any time thereafter, issue a written demand to the Responsible Party to repair/replace the damaged area within seven (7) days of the written notice. Should the Responsible Party not begin work to repair/replace the damaged area within seven (7) days of receiving written notice from the Non-Responsible Party, or should the Responsible Party not diligently prosecute such work to completion, the Non-Responsible Party may at his/her/their sole discretion repair or replace the damaged area, and the Responsible Party shall bear all costs thereof.
- C) Emergency Repairs and Mutual Upkeep: Should the Party Wall need emergency repairs and/or need to be repaired/replaced due to no fault of either party to this Agreement, the parties will split the cost of repair/replacement equally.
- D) Any repairs/replacement/construction to the Party Wall or garage structural members (i.e. roof and/or other walls) must be approved in writing by both parties to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed, and all proper permits and plans must be obtained if applicable.

### 2.2 Uses of the Party Wall

The Party Wall is to be used solely as a dividing wall between the garages of 4426 Owners and 4424 Owners. The h Owners of each garage shall be allowed to use their respective side of the Party Wall in any matter in which they deem fit, so long as such use does not damage the Party Wall or interfere in any way whatsoever with the other Owners' use and enjoyment of the Party Wall.

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## 2.3 Agreement Intended to Run With Land

This Party Wall Agreement shall run with the land and shall be binding and inure to the benefit of the parties to this Agreement, their heirs, successors or assigns, and the owners, from time to time of the 4424 Owners' Property and the 4426 Owners' Property.

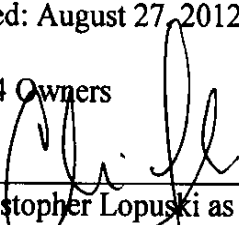
## Section 3. GENERAL PROVISIONS

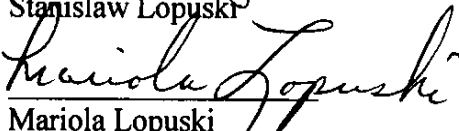
### 3.1 Costs of Enforcement

In the event of any judicial or other adversarial proceeding between the parties concerning this Agreement, to the extent permitted by law, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled. For purposes of this Section 3.1, a party will be considered to be the "prevailing party" if (a) such party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other party, trial, or alternative dispute resolution process), (b) such party did not initiate the litigation and either (i) received a judgment in its favor, or (ii) did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (c) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking.

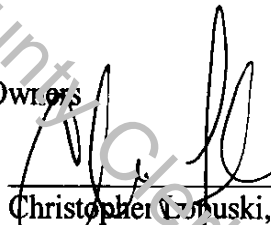
Dated: August 27, 2012

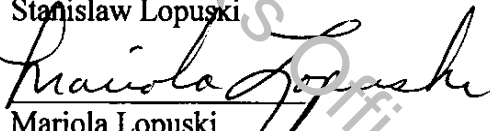
4424 Owners

  
\_\_\_\_\_  
Christopher Lopuski as  
Power of Attorney for  
Stanislaw Lopuski

  
\_\_\_\_\_  
Mariola Lopuski

4426 Owners

  
\_\_\_\_\_  
Christopher Lopuski, as  
Power of Attorney for  
Stanislaw Lopuski

  
\_\_\_\_\_  
Mariola Lopuski

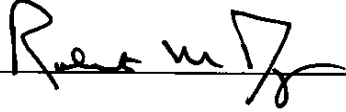
STATE OF ILLINOIS            )  
  )  
  )        ss.  
COUNTY OF COOK            )

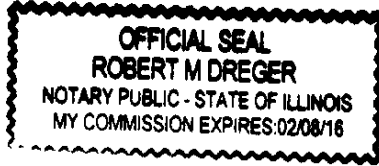
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Christopher Lopuski and Mariola Lopuski, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that the undersigned signed, sealed and delivered the said instrument as the free and voluntary act of the undersigned,

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for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 27<sup>th</sup> day of August 2012

 (Notary Public



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**EXHIBIT "A"**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

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## LEGAL DESCRIPTIONS

### **4424 N. Kilbourn Avenue**

THE SOUTH  $\frac{1}{2}$  OF LOT 7 IN BLOCK 37 IN MONTROSE, A SUBDIVISION OF THE NORTHWEST  $\frac{1}{4}$  AND THE NORTH  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE EAST  $\frac{1}{2}$  OF LOT 1 OF A SUBDIVISION OF THE NORTH  $\frac{1}{2}$  OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN 13-15-129-042-0000

### **4426 N. Kilbourn Avenue**

THE NORTH  $\frac{1}{2}$  OF LOT 7 IN BLOCK 37 IN MONTROSE, A SUBDIVISION OF THE NORTHWEST  $\frac{1}{4}$  AND THE NORTH  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE EAST  $\frac{1}{2}$  OF LOT 1 OF A SUBDIVISION OF THE NORTH  $\frac{1}{2}$  OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN 13-15-129-041-0000



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**EXHIBIT "B"**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

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## EXHIBIT B- EASEMENT PARCEL

~~EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND PARTY WALL RIGHTS DATED AUGUST 27, 2012 AND RECORDED ~, 2012 AS DOCUMENT ~ AS CREATED BY STANISLAW LOPUSKI AND MARIOLA LOPUSKI FOR THE PURPOSE OF A PARTY WALL IN THE GARAGE AND INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:~~

THE SOUTH 4.5 FEET OF THE NORTH 1/2 OF LOT 7, IN BLOCK 37 IN MONTROSE, A SUBDIVISION OF THE NORTHWEST 1/4 & THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE EAST 1/2 OF LOT 1 OF A SUBDIVISION OF THE NORTH 1/2 OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LEGALD

RJK

08/30/12

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