

**TOWNHOME PURCHASE AGREEMENT**  
**SoHo TOWNHOMES**  
**Oak Park, Illinois**

NAME OF PURCHASER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ Phone: \_\_\_\_\_

EMAIL: \_\_\_\_\_

NAME OF SELLER: Home & South LLC

ADDRESS: 6823 West Roosevelt Road, Berwyn, Illinois 60402 Phone: 708 788-4051

**1. Purchase of Unit.** Seller agrees to convey or cause to be conveyed to Purchaser (or Purchaser's assignee), and Purchaser agrees to purchase from Seller, pursuant to the terms and conditions of this Agreement, Unit \_\_\_\_\_ (herein called the "Unit"), in the building commonly known as \_\_\_\_\_, Oak Park, Illinois 60302 (the "Building"), situated on the real estate depicted in the diagram on file in Seller's sales office together with an undivided interest in portions of vacant land adjacent to the Unit and shown on the survey as "Common Elements" [as defined in the Declaration of Unit Ownership, Party Wall Rights, Easements, Restrictions and Covenants for the SoHo TOWNHOMES (the "Declaration")]. The Unit and its corresponding interest in the Common Elements are herein collectively called the "Unit Ownership".

**2. Purchase Price and Association Assessments.** The total purchase price for the Unit Ownership and the payment therefore shall be as follows:

Base Purchase Price	\$ _____
Initial Earnest Money Received (5%)	\$ _____
Cost of Options, Extras and Upgrades (if chosen)	\$ _____
Earnest Money for Upgrades	\$ _____
Total Purchase Price (Purchase price + upgrades)	\$ _____
Balance Due at Closing, by cashier's or certified check	\$ _____
( Total Purchase price less all earnest money)	

Any funds paid to FC Pilgrim Realty in connection with the Reservation Agreement have been delivered to Seller and are reflected in "Initial Earnest Money Received" as set forth above. The earnest money shall be held by Seller in a non-interest bearing account. Purchaser shall also pay at the Closing: an amount equal to three (2) months' of unit assessments for the Reserve Fund for the SoHo Townhomes Owners Association (the "Association"); the regular monthly assessments for the first month following the month in which the closing occurs; and the pro rata assessment due for the balance of the month in which closing occurs.

**3. Declaration of Unit Owner Covenants.** Purchaser acknowledges receipt of a copy of the DECLARATION FOR SOHO TOWNHOMES. Seller shall cause the Declaration to be recorded with the Recorder of Deeds of Cook County, prior to distribution of the sale proceeds from Closing. Seller reserves the right to modify the Declaration without Purchaser's consent prior to Closing in Seller's sole discretion; provided, however, that no changes shall be made to the Declaration which affect or modify the Association's obligation to repair and maintain the roof, windows, exterior brick and stucco, remove snow from common driveways, and landscape the common areas. Purchaser agrees that, from and after closing, Purchaser will comply with the provisions of and perform all the obligations imposed on Unit Owners by the Declaration.

**4. Conveyance of Title.** At closing, Seller shall convey or cause to be conveyed to Purchaser fee simple title to the Unit Ownership by a recordable Corporate Warranty Deed subject only to: (a) general real estate taxes and assessments not due and payable at the time of closing; (b) party wall rights and agreements, easements, covenants, conditions, restrictions, ordinances and building lines of record; (c) easement agreements which may hereafter be executed by Seller; (d) the Declaration, including all amendments and exhibits thereto; (e) applicable zoning and building laws and ordinances; (f) acts done or suffered by Purchaser or anyone claiming by, through or under Purchaser; and (g) other title exceptions, if any, provided Seller has procured an endorsement from Greater Illinois Title Company (the "Title Insurer") insuring over any such exceptions (the exceptions set forth in clauses (a) through (g) are hereinafter collectively called the "Permitted Exceptions"). If Purchaser desires to hold title to the Unit any title-holding entity other than Purchaser, Purchaser shall so notify Seller in writing at least twenty (20) days prior to closing, identifying said entity to Seller's reasonable satisfaction.

**5. Personal Property, Upgrades and Color Selections.**

(a) The Purchase Price includes the Interim, Kitchen, Bathroom and Exterior Features listed on Exhibit "A" attached hereto. AS TO ALL APPLIANCES AND CONSUMER PRODUCTS (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL, STATE AND LOCAL LAWS) WHICH MAY BE CONTAINED IN THE UNIT, SELLER NEITHER MAKES NOR ADOPTS ANY WARRANTY OF ANY NATURE REGARDING SUCH APPLIANCES, FIXTURES AND OTHER CONSUMER PRODUCTS AND SPECIFICALLY EXCLUDES AND DISCLAIMS EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE INVOLVING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) Purchaser shall have ten (10) business day to request Upgrades and Options for the Unit. Any such selections shall be reflected on an Upgrade Selection Sheet signed by Seller and Purchaser, and shall result in an increased Purchase Price and additional earnest money being due and payable. In such event, the plans and specifications for the Unit shall be modified by the Optional Upgrades. Any modifications requested are to be solely and exclusively for the benefit and convenience of the Purchaser. In the event that Closing shall not occur pursuant to this Agreement for any reason not attributable to fault of Seller, then Seller shall retain all sums paid by Purchaser for Upgrades and Options.

(c) All sections of colors of floor coverings, wall tile and appliances and other Purchaser selection items shall be made within fourteen (14) days after Purchaser has received written notice by Seller (approximately 4 months before closing). If Purchaser fails to make such selections at the time specified, Seller is authorized to complete the Purchased Unit without regard to such selections or declare Purchaser in default. Any selections desired by the Purchaser shall be subject to the Seller's prior written approval.

Purchaser is on notice that a sample of a natural product, made of wood, granite, marble, etc. can not show all potential acceptable variations for that particular grade of material. Purchaser shall look to the industry standard for the acceptable variations and is presumed to understand and accept the industry standard for the grade of material selected.

(d) Seller will deliver to Purchaser at the Closing a bill of sale ("Bill of Sale") for all of the personal property purchased and installed in the Unit as selected by Purchaser.

**6. Warranties and Disclaimer.** At Closing, Seller shall deliver to Purchaser a Certificate of Limited Warranty with respect to the Unit in the form attached as Exhibit "B" hereto, and shall deliver all manufacturer's warranties for appliances and equipment in the Unit. THE CERTIFICATE OF LIMITED WARRANTY SHALL BE THE ONLY WARRANTY SELLER WILL PROVIDE, AND PURCHASER HEREBY AGREES THAT THERE SHALL BE NO OTHER WARRANTIES GIVEN. SELLER HEREBY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS AND HABILITABILITY (AS SET FORTH IN PETERSEN V. HUBSCHMAN). SELLER'S PROVISION OF THE LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS OF CONSUMER PRODUCTS IS MADE BY SELLER. THIS PARAGRAPH SHALL SURVIVE CLOSING.

**7. Construction; Closing.**

(a) ***Scope of Construction.*** Seller agrees to substantially complete construction of the Unit in compliance with the plans and specifications for that unit on file in Seller's sales office ("Plans") as those Plans may change in accordance with this Agreement. The Plans are available for Purchaser's inspection during regular business office at Seller's sales office. As of the date hereof, Seller estimates that Substantial Completion and Closing shall occur on or before \_\_\_\_\_, 200\_\_ (the "Anticipated Closing Date"); provided, however, that Closing may be delayed by Purchaser's failure to make selections, or delays in obtaining building or other governmental permits, or other causes beyond Seller's control. Seller shall not be responsible for delays due to changes or selections requested by Purchaser, natural catastrophes, strikes, Acts of God, riots, governmental regulations or restrictions, material or labor shortages, inclement weather, damage by the elements or other occurrence beyond Seller's reasonable control, and in the event any of the foregoing shall occur or exist, closing shall be delayed for a period of time equal to such event, or for such additional time as may reasonably be required to repair any damage caused thereby. Within 24 hours prior to Closing, Seller and Purchaser shall jointly prepare a punchlist of incomplete items. Seller shall use its best reasonable efforts to complete all punchlist items within 30 days of Closing (weather permitting). No funds shall be held back at Closing to guarantee completion of punchlist items.

(b) ***Closing.*** The Closing shall occur within 10 days of the date of Substantial Completion of the Unit by Seller (as evidenced by the issuance of a certificate of substantial completion from Seller's architect), on the date designated by Seller, upon not less than ten (10) days prior written notice to Purchaser, through an escrow with Greater Illinois Title Company ("Title Insurer"), in its Oak Park office located at 137 North Oak Park Ave., Oak Park, IL (708) 763-93210. Payment of the balance of the purchase price and delivery of the deed and other closing documents required hereunder shall be made through the escrow. State, county and local real estate transfer tax shall be paid by Seller. Seller shall provide the required title policy and shall pay the charges in connection therewith customarily charged by the title insurer to sellers, and Purchaser shall pay any such charges customarily charged by the title insurer to purchasers, including the charge for recording Purchaser's deed and mortgage. Purchaser shall pay all charges, costs and expenses related to the Purchaser's mortgage financing, if any, including the cost of the escrow (unless there is no mortgage lender, in which event the parties shall split the escrow costs equally).

Not less than five (5) days prior to the Closing, Seller shall deliver to Purchaser or his agent the customary title commitment for an ALTA Form-B Owner's title insurance policy issued by the Title Insurer, showing title in Seller, subject only to (a) the Permitted Exceptions; and (b)

title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the closing.

At Closing, Seller shall furnish Purchaser with a copy of a survey for the Building, the Unit and the lot on which the Building is located and a certificate of occupancy for the Unit issued by Oak Park (which may be subject to exterior work not yet completed at Closing). As a condition precedent to disbursement of sale proceeds from the escrow, the Title Insurer shall be ready to issue its ALTA Form-B Owner's title insurance policy (which shall include extended coverage over the usual five (5) printed Schedule B exceptions) in the amount of the purchase price, showing title in Purchaser, subject only to Permitted Exceptions. If there are title exceptions other than the Permitted Exceptions, Seller shall have thirty (30) days from the proposed date of closing to cure or obtain title insurance over the additional exceptions and closing shall be delayed until said exceptions are cured or insured over. If Seller fails within the specified time to have the exceptions removed or, in the alternative, to obtain an endorsement to the title policy in the usual and customary form provided by the Title Insurer whereby the Title Insurer insures Purchaser against any loss of or damage on account of such exceptions, Purchaser may terminate this Agreement upon notice to Seller within ten (10) days after the expiration of the thirty (30) day period. In the absence of such notice, Purchaser shall be deemed to have accepted the status of title and shall be obligated to close within five (5) days after the expiration of said ten (10) day period without any abatement in the purchase price. In the event Purchaser terminates this Agreement by timely notice as aforesaid, due to defects in title which Seller cannot cure, Seller shall return to Purchaser all sums of money heretofore paid to Seller by Purchaser, and this shall be Purchaser's sole and exclusive remedy, this Agreement thereupon becoming null and void and neither party shall thereafter have any rights against the other. Sale proceeds may be applied to release any lien of Seller's financing against the Unit, if any, and to release any mechanic's liens, if any, unless the Title Insurer is otherwise prepared to issue its guarantee against loss or damage.

**8. Prorations.** General real estate taxes, assessments, insurance premiums and other customarily prorated items shall be adjusted ratably as of the time of closing. Real estate taxes shall be prorated as follows:

Seller will be solely responsible for 2007 real estate taxes. For 2008 and 2009 real estate taxes seller will give a credit at the closing to the purchaser based on 1/17 of the most recent ascertainable undivided real estate taxes, prorated for the number of days seller owned the property in those years. Said tax credit is a final settlement of sellers' 2008 and 2009 real estate tax obligation for unit \_\_\_\_\_. Purchaser will be solely responsible for the 2008 and 2009 real estate tax bill for unit \_\_\_\_\_.

**9. Possession and Occupancy.** Purchaser shall be entitled to occupancy and possession of the Unit from and after closing.

**10. Sales Promotion.** For the purpose of completing the sales promotion of the units in the Building, Seller and its agents are hereby given full right and authority to place and maintain on, in and about the Property (as defined in the Declaration, but excluding the Unit after closing), signs and lighting related to said sales promotion purposes, for such period of time, at such locations and in such forms as shall be determined by Seller. Seller, its agents and prospective purchasers are also hereby given, for said sales promotion purposes, the right of ingress to, egress from and other use of the Property (excluding the Unit after closing).

**11. Assignment/Resale.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, devisee, personal representatives and successors. Purchaser shall not assign this Agreement and shall not list otherwise offer the Unit for sale without the written consent of Seller, which Seller can withhold for any reason or no reason. Any assignment of Purchaser's rights under this Contract without Seller's written consent is invalid and constitutes a default hereunder. Following closing, Purchaser agrees not to market, or offer the Unit for resale for (six) 6 months, unless at any time during said 6-month period Seller ceases to own any Unit.

**12. Broker.** Purchaser represents and warrants that except for FC Pilgrim Realty, and \_\_\_\_\_, no other broker was instrumental in submitting, showing or selling the Unit to Purchaser, and Purchaser agrees to indemnify and hold Seller harmless from any brokerage claim related to Purchaser's purchase of the Unit asserted against Seller by any such other broker.

**13. Notices.** All notices and demands herein required shall be in writing and shall be deemed sufficient if made by fax with proof of transmission except for notice on the LIMITED WARRANTY which shall be by certified mail, postage prepaid, to Seller or to Purchaser at the address set forth above. The date of such mailing shall be deemed the date of notice for certified mail. The date of fax transmission shall be the date of notice if done within business hours, 9:00AM –5:00PM. If not sent within business hours, then notice will be deemed to have been sent the next business day.

**14. Default.** Time is of the essence of this Agreement. If Purchaser shall fail to make any payment herein provided for, or shall fail or refuse to carry out any other material obligation of Purchaser under the terms of this Agreement and any supplemental agreement made a part hereof, then, at Seller's option, all sums theretofore paid to Seller by Purchaser, including but not limited to the earnest money deposit, shall be forfeited as liquidated damages and shall be retained by Seller, or Seller may elect any other available remedy. A failure to close at the time and pursuant to the terms hereof shall be a default, which shall entitle Seller to \$250 per day for each day after the scheduled Closing date that Purchaser fails to close. If Seller fails or refuses to carry out any material covenants or obligations hereunder or if this Agreement is terminated prior to closing for any reason other than a default by Purchaser, then the sole and exclusive remedy of Purchaser shall be the return of all sums theretofore paid to Seller by Purchaser, and thereupon this Agreement shall be null and void.

**15. Material Destruction.** If, prior to closing, the Unit or a material portion of the Building required for reasonable access to the Unit shall be destroyed or materially damaged by fire or other casualty, Seller shall have the option, exercised by notice to Purchaser within thirty (30) days after such destruction or damage, to either a) declare this Agreement null and void and refund the earnest money to Purchaser; or b) notify Purchaser of the amount of time it will take to rebuild the Building and Unit. Unless Seller elects to terminate this Agreement, this Agreement shall remain in full force and effect. Thereafter, if Seller fails to repair/rebuild the Unit or Building within the time estimate provided to Purchaser, then Purchaser shall have the right to terminate this Agreement by notice to Seller within ten (10) days after the expiration of said period; provided, however, that in the event Purchaser delivers such notice to terminate this Agreement, if (i) Seller notifies Purchaser that the construction of the Unit will be completed within thirty (30) days of the receipt by Seller of Purchaser's notice to terminate this Agreement and (ii) such notice from Seller to Purchaser specifies a day within such thirty (30) day period for the closing, the closing shall occur on the date specified by Seller in such notice. Except as

specifically provided herein to the contrary, the provisions of the Uniform Vendor and Purchaser Act of the State of Illinois shall be applicable to this Agreement.

**16. Time for Acceptance.** This Agreement, when executed by Purchaser and delivered to Seller together with the earnest money specified hereunder, shall constitute, for a period of 5 days after the date hereof, an irrevocable offer by Purchaser to purchase the Unit. In the event Seller executes this Agreement and delivers a copy thereof to Purchaser within such 5-day period, Purchaser's offer shall be deemed accepted and the Agreement binding. Delivery in person or the mailing of an accepted copy of this Agreement to Purchaser by certified mail during the aforesaid 5-day period shall be deemed acceptance by Seller. In the event Purchaser's offer is not accepted within the said 5-day period, at the option of Purchaser to be exercised in writing prior to the date that Seller delivers an executed copy of this contract as aforesaid, all deposits made by Purchaser to Seller shall be returned to Purchaser and Purchaser's offer shall be deemed withdrawn. Purchaser shall not record this Agreement or any memorandum thereof, and any such recording shall constitute a default under this Agreement by Purchaser.

**17. Non Access.** Neither Buyer nor Buyer's agents or contractors shall enter the Residence prior to the closing date, nor shall Buyer perform or install, cause to be performed or installed any work or materials in the Residence prior to the Closing Date, without prior written consent of Seller.

In the event the buyer s enter the premises with consent of the seller they do so at their own risk. Buyers are on notice that construction sites can be dangerous and that buyers should take proper care to avoid injury or death.

In the event Buyer or its agents or contractors enter upon said Residence without written consent of the seller it shall be deemed to be a default by buyer, and Seller, as its sole option, may elect to terminate this contract. In this instance, with notice to Buyer, the earnest money and any and all amounts paid by Buyer to Seller hereunder shall be forfeited to Seller as liquidated damages and the contract shall be declared null and void. Seller may pursue any other additional available remedy. Seller's election not to terminate this contract upon Buyer's breach of this section of the contract shall not be deemed to be a waiver by Seller hereunder and Seller may in its sole discretion, elect to terminate the contract for any subsequent breach by Buyer hereunder.

**18. Definition of Terms.** The terms used herein, to the extent they are defined in the Declaration, shall be defined as set forth therein. Wherever appropriate, as used herein, the singular denotes the plural and the masculine and the feminine are interchangeable. The words "date hereof" mean the date on which both parties have signed this Agreement and delivered a signed copy to the other party. This Agreement may be signed in counterparts.

**19. Entire Agreement.** This Agreement constitutes the entire agreement between Purchaser and Seller. No representations, warranties, undertakings, or promises, whether oral, implied or otherwise, can be made or have been made by either Seller or Purchaser to the other unless expressly stated herein or unless mutually agreed to in writing by the parties hereto. All amendments, supplements or riders hereto, if any, shall be in writing and executed by both Purchaser and Seller.

**19. Riders and Exhibits.** Exhibit "A", entitled "SOHO Townhomes Interior, Kitchen, Bath and Exterior Features" and Exhibit "B", entitled "Certificate of Limited Warranty", are attached hereto and incorporated herein by reference.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2008.

**SELLER: Home and South, LLC**

**PURCHASER:**

\_\_\_\_\_  
By its Manager  
E-mail: jshack@homescapeinc.net  
Phone (708) 788-4051  
Facsimile: (708) 788-4052  
6823 W. Roosevelt  
Berwyn, IL 60402

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**SELLER'S COUNSEL:**

**PURCHASER'S COUNSEL:**

Name: Amy E. Ketchum  
Phone: (708) 524-5096  
Facsimile: (708) 406-1557  
Email: AEKetchum@ketchumlaw.net  
524 S. Kenilworth Ave.  
Oak Park, IL 60304-1128

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Listing Realtor:  
April Moon  
FC Pilgrim  
(708) 524-4537 or (708) 383-8300  
Fax (708) 383-8575  
Email : [amoon@fcpilgrim.com](mailto:amoon@fcpilgrim.com)

Lender:  
Name \_\_\_\_\_  
Contact \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

EXHIBIT "A"  
SOHOTOWNHOMES FEATURES SHEET

Options and Upgrades Pricing Sheet

Cost of Options, Extras and Upgrades listed above \$ \_\_\_\_\_  
Previous Contract Amount \$ \_\_\_\_\_  
Total Contract Amount as of \_\_\_\_\_ date \$ \_\_\_\_\_  
Additional Earnest Money received on \_\_\_\_\_ \$ \_\_\_\_\_  
Balance Due at Closing \$ \_\_\_\_\_

**SELLER:**

**PURCHASER:**

**Home & South LLC**

\_\_\_\_\_  
By its Manager

Prepared by and after  
Recording return to:  
Dennis W. Winkler  
Kuhn, Mitchell, Moss, Mork & Lechowicz  
111 East Jefferson Avenue  
Naperville, IL 60540

## ACCESS AND UTILITY AGREEMENT

**THIS ACCESS AND UTILITY AGREEMENT** (the *AAgreement@*) is established this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, by Home and South, LLC, an Illinois limited liability company (hereinafter *ADeclarant@*).

The following recitals of fact are a material part of this Agreement:

- A. Declarant is the holder of legal title to a certain parcels of land (the *ALand@*) in the Village of Oak Park, County of Cook and State of Illinois, and commonly known as 101 – 109 Home Avenue; 113 – 115 Home Avenue and 111 Greenway, (collectively the *ATownhome Parcel@*) which is legally described on Exhibit A attached hereto and made a part hereof and certain parcels commonly known as 1005; 1010 and 1013 South Boulevard (collectively the *ACondominium Parcel@*), which is legally described on Exhibit B attached hereto and made a part hereof ;
- B. Declarant intends to improve the Townhome Parcel with 17 residential townhomes;
- C. Declarant intends to improve the Condominium Parcel with 15 residential condominium units over commercial space;
- D. Access to both the Townhome Parcel and the Condominium Parcel is only available from South Boulevard through and over the one Driveway common to both Parcels that comprises the surfaced area in the parcel and legally described on Exhibit C (the "*Easement Parcel*");
- E. Declarant wishes to grant a perpetual, non-exclusive easement for ingress and egress over, upon and across the Easement Parcel for the benefit of the future owners of the Townhome Parcel and the Condominium Parcel (each, an *AOwner@*).

- F. Both the Townhome Parcel and the Condominium Parcel are serviced by sanitary sewer lines and water lines that run from South Boulevard through and over the Easement Parcel (the "*Utilities*").
- G. Declarant wishes to grant a perpetual, non-exclusive easement for the Utilities over, upon and across the Easement Parcel for the benefit of the future owners of the Townhome Parcel and the Condominium Parcel.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. ***Ingress and Egress Easement.*** Declarant hereby grants, gives and conveys to the Owners and invitees of the Condominium Parcel and the Townhome Parcel, and their successors and assigns, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across the Easement Parcel, to provide access for vehicular and pedestrian use between the Townhome Parcel, the Condominium Parcel and South Boulevard. The Easement Parcel is intended to form, and shall be used as a continuous two-way roadway for the movement and passage in opposite directions of vehicular and pedestrian traffic. In furtherance of the purposes herein provided, the parties hereto shall not park or leave any unattended, or permit to be parked or left unattended, any vehicle on the Easement Parcel, or otherwise obstruct or interfere in any way, or permit to be obstructed or interfered with in any way, the use and enjoyment of the Easement Parcel, except as hereinafter provided. Except for construction and/or installation of service pavement and grade level facilities attended thereto, and the Utilities, no permanent structures or improvements, which are at or above grade level, shall be constructed or erected upon, over, across or along the Easement Parcel without the prior written consent of all the Owners of the Land, and the consent of the mortgagee under any mortgage or trust deeds then of record on said properties.

2. ***Utility Easement.*** Declarant hereby grants, gives and conveys to the Owners and invitees of the Condominium Parcel and the Townhome Parcel, and their successors and assigns, a non-exclusive, irrevocable and perpetual easement for the Utilities over, upon and across the Easement Parcel.

3. ***Conduct and Coordination of Maintenance, Repair and Replacement.*** All maintenance and repair of the Easement Parcel, including repairs and improvements for both the Driveway and the Utilities, shall be made so as to interfere as little as practicable with the rights of all building(s) constructed on the Land. The costs of maintenance, repair, replacement and snow removal of the Easement Parcel, including the Driveway and Utilities, shall be borne by the Owners

of the respective parcels as follows: 77% to the Owners of the Townhome Parcel and 23% to the Owners of the Condominium Parcel.

4. *Covenants Running with the Land.* All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of Declarant. It is anticipated that the Condominium Parcel will be submitted to the provisions of the Illinois Condominium Act (the "Act"), and that the Townhome Parcel will be submitted to the Act or will be submitted to a Declaration whereby an association is formed to maintain the townhome common areas. In such event, the condominium or townhome association, as the case may be, shall assume the benefits and obligations hereunder.

5. *Interpretation.* The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the Declarant to confer a usable right of enjoyment for ingress and egress and underground utility service on each grantee.

6. *Performance of Other Party's Obligations.*

In the event of an emergency requiring maintenance or repair of the Easement Parcel, if the party who is responsible for such maintenance or repair does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that such party who is responsible will, or will be able to, undertake such maintenance or repair, the other party may, at its option, perform such maintenance or repair and pay any and all costs and charges associated therewith.

Subject to the provisions of Section 7 hereof, in the event a failure by either party hereto to maintain and repair the Easement Parcel on the Parcel to which it holds title as such party is required to do pursuant to this Agreement results in a material interference with the rights granted to the other party by this Agreement or with the use or operation of the other party's Parcel or the improvements located thereon from time to time, but does not result in an emergency, the other party may notify the party in default in writing of such failure. In the event the party in default fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, in the event the party in default fails to commence the cure of such default within such ten (10) day period and diligently pursue such cure to completion, the other party may, at its option, perform the obligation which the party in default has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

In any event described in this Section 6, the performing party shall be entitled

to recover from the other party the charges, fees, costs and expenses incurred by the performing party (including, if the other party is in default, reasonable attorneys' fees) in connection therewith, together with interest thereon at the Default Rate of Interest (as hereinafter defined) from the date of payment. Such charges, fees, costs, expenses and interest shall be paid by the other party within ten (10) days after receipt of a statement thereof from the performing party. For the purposes hereof, the term "*Default Rate of Interest*" shall be the rate of interest from time to time announced by Bank of America, or its successor as its prime rate plus three percent (3%).

Each party which performs any maintenance or repair to the Easement Parcel to which the other party holds title shall restore the area affected by such maintenance or repair to the condition existing prior thereto or prior to any damage or disrepair necessitating such maintenance or repair, and any failure to do so shall give the party which holds title to such area the rights of a non-defaulting party pursuant to this Section 6.

7. *Force Majeure; Interruption of Services.*

If either party hereto fails to perform in a timely manner any of the obligations to be performed by such party under this Agreement, and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or such other party's employees, agents, licensees, invitees or contractors) or any other cause beyond the reasonable control of the non-performing party, then the non-performing party shall not be deemed in default hereunder as a result of such failure. The foregoing shall not excuse any failure to make any payment of money in a timely manner.

Neither party shall be liable in damages for any interruption of utility services to the Easement Parcel, if any, to which the other party holds title which may arise out of or be occasioned by maintenance or repair of the Easement Parcel unless such interruption of service results from the wanton or willful misconduct of such party.

8. *Mortgages.*

Any mortgagee with respect to either Parcel shall not be responsible for any amounts incurred or becoming due under this Agreement prior to a foreclosure of its mortgage or a transfer of the interest of a party hereto in a Parcel to such mortgagee in lieu of foreclosure, and its liability hereunder in the event of such a foreclosure or transfer shall exist only so long as such mortgagee is the owner of a

Parcel and shall not continue or survive after further transfer of ownership.

9. *Indemnity and Insurance.*

The Condominium Parcel Owners shall indemnify and hold harmless the Townhome Parcel Owners from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from the Condominium Parcel Owners= negligent use of the Easement Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of the Townhome Parcel Owners or their agents or the acts of other parties who have been granted any easement by the Townhome Parcel Owners upon, over and across the Easement Parcel.

The Townhome Parcel Owners shall indemnify and hold harmless the Condominium Parcel Owners from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from the Townhome Parcel Owners= negligent use of the Easement Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of the Condominium Parcel Owners= agents or the acts of other parties who have been granted any easement by the Condominium Parcel Owners upon, over and across the Easement Parcel.

Each party shall carry at all times, with respect to the Parcel owned by it, commercial general public liability insurance, including contractual liability, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence or such higher limit as the other party may reasonably request and procure for its own policy. Such insurance shall name the other party and its beneficiaries and the respective agents and employees of each of them as additional insureds.

Each party shall, from time to time upon the request of the other party, furnish to the other party policies or certificates evidencing such coverage, which policies or certificates shall state that such insurance coverage may not be reduced, cancelled or allowed to expire without at least thirty (30) days' prior written notice to each party hereto.

10. *Governing Law.* This Agreement shall be governed and construed under the laws of the State of Illinois.

11. *Successors and Assigns.* The covenants and agreements herein contained shall bind and inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by Declarant on the date set forth above.

Home and South, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Jonathan Shack, Manager

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jonathan Shack, personally known to me as the Manager of Home and South, LLC, and 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 he signed and delivered the same instrument pursuant to authority given by said company as its free and voluntary act and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

CONSENT OF MORTGAGEE

\_\_\_\_\_, as Mortgagee under mortgage dated \_\_\_\_\_, recorded and filed with the Recorder's Office of Cook County, Illinois, on \_\_\_\_\_, as Document No. \_\_\_\_\_, hereby consents: (1) to the execution and recording of the above and foregoing Agreement.

IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf at \_\_\_\_\_, Illinois, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his or her own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:  
\_\_\_\_\_

**EXHIBIT AA@**

Townhome Parcel

Legal Description

**EXHIBIT AB@**

Condominium Parcel

Legal Description

**EXHIBIT AC@**

Easement Parcel

Legal Description