

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VISION ON STATE CONDOMINIUM
ASSOCIATION, an Illinois not-for-profit
corporation,

Plaintiff,

v.

VISION ON STATE PARKING, LLC, an
Illinois limited liability company, 13th AND
STATE, LLC, an Illinois limited liability
company, WARREN BARR, an individual,
JIM CARROLL, an individual, and BRIAN
COLLINS, an individual,

Defendants.

09CH15965

Case No.

Jury Demand

**VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

NOW COMES the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation ("PLAINTIFF" or "ASSOCIATION"), by and through its attorneys, PENLAND & HARTWELL, LLC, and as and for its *Verified Complaint for Declaratory Judgment and Other Relief* ("COMPLAINT") against the Defendants, VISION ON STATE PARKING, LLC, an Illinois limited liability company ("COMMERCIAL GARAGE OWNER"), 13th AND STATE, LLC, an Illinois limited liability company ("DEVELOPER"), WARREN BARR, an individual ("BARR"), JIM CARROLL, an individual ("CARROLL"), and BRIAN COLLINS, an individual ("COLLINS")(BARR, CARROLL, and COLLINS, are collectively referred to hereinafter as "DIRECTORS"), states as follows:

JURISDICTION AND VENUE

1. The ASSOCIATION is an Illinois not-for-profit corporation with its principal place of business located at 1255 South State Street, Chicago, Cook County, Illinois , Chicago, Cook County, Illinois ("PROPERTY").

2. The ASSOCIATION conducts, and did conduct at all times herein relevant, a significant amount of business in Cook County, Illinois.

3. COMMERCIAL GARAGE OWNER is an Illinois limited liability company with its principal place of business at 1502 West Chicago Avenue, Chicago, Cook County, Illinois.

4. COMMERCIAL GARAGE OWNER, conducts, and did conduct at all times herein relevant, business in Cook County, Illinois.

5. DEVELOPER is an Illinois limited liability company with its principal place of business at 2215 York Road, Suite 302, Oak Brook, Cook County, Illinois.

6. DEVELOPER, conducts, and did conduct at all times herein relevant, business in Cook County, Illinois.

7. Upon information and belief, BARR is a citizen of the State of Illinois residing in Cook County, Illinois.

8. Upon information and belief, BARR conducts, and did conduct at all times herein relevant, business in Cook County, Illinois.

9. Upon information and belief, CARROLL is a citizen of the State of Illinois residing in Cook County, Illinois.

10. Upon information and belief, CARROLL conducts, and did conduct at all times herein relevant, business in Cook County, Illinois.

11. Upon information and belief, COLLINS is a citizen of the State of Illinois residing in Cook County, Illinois.

12. Upon information and belief, COLLINS conducts, and did conduct at all times herein relevant, business in Cook County, Illinois.

13. Substantially all the occurrences alleged and complained of in this COMPLAINT occurred in Cook County, Illinois.

14. Pursuant to Section 5/2-101 of the *Illinois Code of Civil Procedure*, Cook County is the proper venue for this action.

ALLEGATIONS COMMON TO ALL COUNTS

15. In or about 2004, DEVELOPER began developing the PROPERTY into a mixed-use building complex consisting of a nineteen (19) story high-rise condominium tower and an attached five (5) story garage facility ("GARAGE"). A true and accurate copy of the *Affidavit of Mary Morrison* is attached hereto and incorporated herein as **Exhibit 1**.

16. While the mixed-use building complex at the PROPERTY is a single structure DEVELOPER divided the same into "residential areas" (i.e. the ASSOCIATION) and separate "commercial areas." See **Exhibit 1**.

17. The residential ASSOCIATION is comprised of: floors five (5) through nineteen (19) of the high-rise tower, which include two hundred fifty three (253) residential condominium units, and related common areas; and floors three (3) through five (5) of the GARAGE, which include two hundred fifty four (254) parking spaces used exclusively by the ASSOCIATION's residents ("CONDOMINIUM GARAGE PROPERTY"). See **Exhibit 1**.

18. The remaining "commercial areas" consist of the first (1st) floor of the high-rise tower and the first two (2) floors of the GARAGE ("COMMERCIAL GARAGE PROPERTY"). See **Exhibit 1**.

19. The GARAGE has only one (1) entrance and only one (1) exit for all vehicles, which are both located on the first (1st) floor in the COMMERCIAL GARAGE PROPERTY. See **Exhibit 1**.

20. The ASSOCIATION's residents can only access the CONDOMINIUM GARAGE PROPERTY by going through the COMMERCIAL GARAGE PROPERTY: there are no other entrances or exits. See Exhibit 1.

21. DEVELOPER has created a "toll way" by dividing the GARAGE so that the ASSOCIATION's residents cannot access their own parking spaces without first going through the COMMERCIAL GARAGE PROPERTY. See Exhibit 1.

22. Upon information and belief, COMMERCIAL GARAGE OWNER was created for the sole purpose of owning and operating the COMMERCIAL GARAGE PROPERTY.

23. Upon information and belief, the principals of COMMERCIAL GARAGE OWNER are affiliated with the principals of DEVELOPER.

24. The relationship between the ASSOCIATION and COMMERCIAL GARAGE OWNER is governed by a *Declaration of Condominium Ownership for Vision on State Condominium and Provisions Relating to Certain Non-Condominium Property*, prepared and recorded by DEVELOPER as Document No. 0716222081 ("DECLARATION"). A true and accurate copy of the DECLARATION is attached hereto and incorporated herein as Exhibit 2.

25. Section 2.04 of the DECLARATION states that "[e]ach Unit Owner of a Parking Unit shall have a *perpetual non-exclusive easement* for vehicular and pedestrian access over and across driveways, walkways and stairways in the portion of the garage which is part of the Commercial Property for access to and from the Unit Owner's Parking Unit and a public way." Exhibit 2 at 2.04(a)(i)(emphasis added).

26. Pursuant to Section 10.04(e) of the DECLARATION, the ASSOCIATION is forced to pay COMMERCIAL GARAGE OWNER the amount of forty five thousand seven hundred twenty dollars (\$45,720.00) per year (adjusted annually by any increase in the consumer price index) for

the use of an easement for ingress and egress through the COMMERCIAL GARAGE PROPERTY to access the CONDOMINIUM GARAGE PROPERTY ("EASEMENT FEE"). Exhibit 2 at §10.04(e).

27. The EASEMENT FEE constitutes a "toll" for the ASSOCIATION'S residents accessing their own parking spaces.

28. The EASEMENT FEE has no rational relationship to the use, maintenance, or other expenses, related to the COMMERCIAL GARAGE PROPERTY, and therefore, it is usurious. See Exhibit 1.

29. Furthermore, the version of the DECLARATION which was attached to the *Property Report* prepared and issued by DEVELOPER, as required by Chapter 13-73 of the *Chicago Municipal Code* ("PROPERTY REPORT"), did not include the EASEMENT FEE. A true and accurate copy of the PROPERTY REPORT is attached hereto and incorporated herein as Exhibit 3.

30. Moreover, the version of the DECLARATION attached to the PROPERTY REPORT included a *Reciprocal Easement and Operating Agreement* as to the GARAGE ("GARAGE AGREEMENT") which granted all parties reciprocal easements to each other's properties in order to use or maintain their own properties. See Exhibit 3 at Exhibit H, at Exhibit D.

31. In this way, in marketing condominium units at the PROPERTY, DEVELOPER never disclosed the existence of the EASEMENT FEE, or even the remote possibility that the ASSOCIATION would have to pay a fee to access the CONDOMINIUM GARAGE PROPERTY. A true and accurate copy of the *Affidavit of Pasquale N. Recchia* is attached hereto and incorporated herein as Exhibit 4.

32. DEVELOPER intentionally withheld this information from purchasers of condominium units at the PROPERTY by waiting until the day before the first scheduled closing on a condominium unit at the PROPERTY to record the actual DECLARATION. See Exhibit 4.

33. Insofar as the DECLARATION was recorded on June 11, 2007, and the first scheduled closing on a condominium unit at the PROPERTY occurred on June 12, 2007, purchasers of condominium units at the PROPERTY had no notice of the EASEMENT FEE, either constructive or otherwise, and therefore, they had no way of knowing that the ASSOCIATION would have to pay an aggregate fee to access the CONDOMINIUM GARAGE PROPERTY. See Exhibit 4.

34. Until November, 2007, the ASSOCIATION'S residents gained unrestrained access to the GARAGE via a remote "clicker" provided by the COMMERCIAL GARAGE OWNER. See Exhibit 1.

35. In or about November, 2007, COMMERCIAL GARAGE OWNER installed a new parking toll system which was not original to the GARAGE ("NEW PARKING SYSTEM"), and which further restricted the ASSOCIATION'S residents' ability to come and go from their own parking spaces. See Exhibit 1.

36. The NEW PARKING SYSTEM unnecessarily regulates the ASSOCIATION'S residents' access to the GARAGE via "transponders" which are issued to members of the ASSOCIATION. See Exhibit 1.

37. In order to enter the CONDOMINIUM GARAGE PROPERTY, residents must access a gate on the first (1st) floor via "transponders," and then they must, within twenty (20) minutes, access a garage door on the second (2nd) floor via "transponders." See Exhibit 1.

38. The "transponders" deactivate if residents do not reach the garage door on the on the second (2nd) floor within twenty (20) minutes of going through the gate on the first (1st) floor. See Exhibit 1.

39. This is especially problematic because “Loading Dock No. 2,” which is used by residents, is located on the first (1st) floor within the GARAGE, and therefore, many residents are locked out of the CONDOMINIUM GARAGE PROPERTY if they stop to use “Loading Dock No. 2” before going through the garage door on the second (2nd) floor. See Exhibit 1.

40. The ASSOCIATION’S residents have encountered numerous problems with the NEW PARKING SYSTEM. See Exhibit 1.

41. Visitors to the PROPERTY access the GARAGE by inserting a credit card into the NEW PARKING SYSTEM thereby allowing COMMERCIAL GARAGE OWNER to collect a parking fee. See Exhibit 1.

42. In this way, the NEW PARKING SYSTEM does not benefit users of the CONDOMINIUM GARAGE PROPERTY in any way, shape, or form, and it is a gratuitous addition to the GARAGE installed by COMMERCIAL GARAGE OWNER in order to collect parking fees. See Exhibit 1.

43. Section 10.04(e) of the DECLARATION requires COMMERCIAL GARAGE OWNER to provide the ASSOCIATION, prior to the first (1st) day of November of each calendar year, with a reasonable estimate of the anticipated “major repairs and/or replacements” over the next five (5) years and the anticipated cost of such repairs. Exhibit 2 at §10.04(e).

44. COMMERCIAL GARAGE OWNER failed to adhere to Section 10.04(e) of the DECLARATION by failing to notify the ASSOCIATION prior to installation of the NEW PARKING SYSTEM. See Exhibit 1.

45. Further, COMMERCIAL GARAGE OWNER failed to establish that the NEW PARKING SYSTEM was a “repair or replacement” and that the ASSOCIATION was responsible for costs associated therewith. See Exhibit 1.

46. Clearly, the NEW PARKING SYSTEM was an addition.

47. In or around April, 2008, COMMERCIAL GARAGE OWNER suddenly for the first time, and without proper cause or basis, demanded that the ASSOCIATION pay seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM, totaling approximately one hundred fifteen thousand dollars (\$115,000.00). See Exhibit 1.

48. Section 10.04(e) of the DECLARATION provides that the ASSOCIATION is responsible for seventy eight percent (78%) of the costs related to “major *repairs and replacements* associated with entrance door to the Garage, the parking/entry system for the Garage and the ramp in the portion of the Garage which is part of the Commercial Property.” Exhibit 2 at §10.04(e)(emphasis added).

49. Section 18.4(a) of the *Illinois Condominium Property Act* (“CONDO ACT”) expressly states that “the term ‘repair, replacement or restoration’ means expenditures to *deteriorated or damaged portions of the property* related to the existing decorating, facilities, or structural or mechanical components...” 765 ILCS 605/18.4(a)(emphasis added).

50. The installation of the NEW PARKING SYSTEM was not a “repair or replacement” as contemplated by the DECLARATION or defined by the CONDO ACT, and it is clearly an addition for the sole and exclusive benefit of COMMERCIAL GARAGE OWNER. See Exhibit 1.

51. COMMERCIAL GARAGE OWNER has no basis to demand that the ASSOCIATION share in any costs related to COMMERCIAL GARAGE OWNER’S installation of the NEW PARKING SYSTEM, which was installed for the sole purpose of allowing COMMERCIAL GARAGE OWNER to collect parking fees. See Exhibit 1.

52. On June 4, 2008, the ASSOCIATION notified COMMERCIAL GARAGE OWNER that, pursuant to the DECLARATION, the ASSOCIATION is not responsible for costs related to installation

of the NEW PARKING SYSTEM. A true and accurate copy of correspondence from the ASSOCIATION's counsel dated June 4, 2008, is attached hereto and incorporated herein as Exhibit 5.

53. From July, 2008, through August 20, 2008, the ASSOCIATION and COMMERCIAL GARAGE OWNER attempted to resolve the matter, but despite repeated requests, COMMERCIAL GARAGE OWNER failed to promptly provide an itemization of such costs, and more importantly, never demonstrated why the ASSOCIATION should pay for the NEW PARKING SYSTEM. See Exhibit 1.

54. Being frustrated by not successfully extorting payment from the ASSOCIATION, on August 20, 2008, COMMERCIAL GARAGE OWNER threatened to shut down the NEW PARKING SYSTEM thereby preventing members of the ASSOCIATION from accessing their own parking spaces. See Exhibit 1.

55. In effect, COMMERCIAL GARAGE OWNER was using the NEW PARKING SYSTEM, as its own private toll system, to hold the ASSOCIATION's own property hostage for payments to which it was never entitled. See Exhibit 1.

56. This is especially abhorrent considering the extortionate EASEMENT FEE already being paid by the ASSOCIATION. See Exhibit 1; Exhibit 2.

57. Without access to the CONDOMINIUM GARAGE PROPERTY, the ASSOCIATION's residents, numbering over two hundred thirty (230) individuals and families, would have to find unsecured street parking, or pay for alternate parking, in the area. See Exhibit 1.

58. Most recently, in or about March, 2009, COMMERCIAL GARAGE OWNER attempted a new scheme to recoup the costs related to the installation of the NEW PARKING SYSTEM by demanding that members of the ASSOCIATION pay the amount of four hundred seventy four

dollars and forty six cents (\$474.46) for each transponder to the NEW PARKING SYSTEM. See Exhibit 1.

59. COMMERCIAL GARAGE OWNER has failed to provide the ASSOCIATION with any information as to the actual cost of the transponders to the NEW PARKING SYSTEM. See Exhibit 1.

60. The cost of similar transponders for parking garages is in the approximate amount of forty dollars (\$40.00). See Exhibit 1.

61. Moreover, the original “clicker” system to access the GARAGE was fully functional and members of the ASSOCIATION could access the CONDOMINIUM GARAGE PROPERTY without having to pay any additional fees to COMMERCIAL GARAGE OWNER. See Exhibit 1.

62. COMMERCIAL GARAGE OWNER installed the NEW PARKING SYSTEM for its sole benefit, and the ASSOCIATION should not have to bare any additional burdens related thereto. See Exhibit 1.

COUNT I - DECLARATORY JUDGMENT AS TO NEW PARKING SYSTEM
(COMMERCIAL GARAGE OWNER)

62. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 62 of the *Allegations Common to All Counts* of the COMPLAINT, as and for Paragraph 1 through Paragraph 62 of this *Count I* of the COMPLAINT, as though fully set forth and alleged herein.

63. As stated more fully above, COMMERCIAL GARAGE OWNER claims that the ASSOCIATION is responsible for seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM because it allegedly constitutes a “repair” or a “replacement” under Section 10.04(e) of the DECLARATION. See Exhibit 1.

64. The ASSOCIATION claims that it is not responsible for seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM because it does not constitute a “repair” or a “replacement” under Section 10.04(e) of the DECLARATION, and the ASSOCIATION has an absolute right to access the CONDOMINIUM GARAGE PROPERTY without having to pay COMMERCIAL GARAGE OWNER for “use” of the NEW PARKING SYSTEM. See Exhibit 1.

65. In this way, an actual controversy exists between the ASSOCIATION and COMMERCIAL GARAGE OWNER, and by the terms and provisions of 735 ILCS 5/2-701, this Honorable Court is vested with the authority to promptly declare the rights and obligations of the parties hereto and to give such further relief as it deems just and proper under the circumstances.

66. A declaratory judgment will serve a useful purpose in clarifying the parties’ rights and obligations under the RECORDED DECLARATION as to: a) whether the ASSOCIATION is responsible for seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM; b) whether the installation of the NEW PARKING SYSTEM constitutes a “repair” or a “replacement” under Section 10.04(e) of the DECLARATION; and c) whether COMMERCIAL GARAGE OWNER may charge the ASSOCIATION (or its members) any fees or costs for “use” of the NEW PARKING SYSTEM to access the CONDOMINIUM GARAGE PROPERTY.

67. For these reasons, the ASSOCIATION respectfully requests that this Honorable Court enter a declaratory judgment in this matter confirming that: a) the ASSOCIATION is not responsible for seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM; b) the installation of the NEW PARKING SYSTEM does not constitute a “repair” or a “replacement” under Section 10.04(e) of the DECLARATION; and c) COMMERCIAL GARAGE OWNER may not charge the ASSOCIATION (or its members) any fees or costs for use of the NEW PARKING SYSTEM to access the CONDOMINIUM GARAGE PROPERTY.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter a declaratory judgment order in its favor and against the Defendant, VISION ON STATE PARKING, LLC, an Illinois limited liability company, confirming that: a) the ASSOCIATION is not responsible for seventy eight percent (78%) of the costs related to the installation of the NEW PARKING SYSTEM; b) the installation of the NEW PARKING SYSTEM does not constitute a “repair” or a “replacement” under Section 10.04(e) of the DECLARATION; and c) COMMERCIAL GARAGE OWNER may not charge the ASSOCIATION (or its members) any fees for costs for use of the NEW PARKING SYSTEM to access the CONDOMINIUM GARAGE PROPERTY, and grant such other and further relief as this Honorable Court deems just and proper.

COUNT II - DECLARATORY JUDGMENT AS TO EASEMENT FEE
(COMMERCIAL GARAGE OWNER)

62. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 62 of the *Allegations Common to All Counts* of the COMPLAINT, as and for Paragraph 1 through Paragraph 62 of this *Count II* of the COMPLAINT, as though fully set forth and alleged herein.

63. As stated more fully above, the DECLARATION imposes the EASEMENT FEE.

64. However, the EASEMENT FEE was not included in the version of the DECLARATION attached to the PROPERTY REPORT. See Exhibit 3 at Exhibit H.

65. In fact, the version of the DECLARATION attached to the PROPERTY REPORT included no hint that the ASSOCIATION’s residents would be subject to any fees or costs for accessing their own parking spaces. See Exhibit 3 at Exhibit H.

66. Moreover, the version of the DECLARATION attached to the PROPERTY REPORT included the GARAGE AGREEMENT which granted all parties reciprocal easements to each other’s

properties in order to use or maintain their own properties. See Exhibit 3 at Exhibit H, at Exhibit D.

67. All members of the ASSOCIATION relied upon the version of the DECLARATION attached to the PROPERTY REPORT and the GARAGE AGREEMENT in purchasing condominium units at the PROPERTY. See Exhibit 4.

68. Neither the version of the DECLARATION attached to the PROPERTY REPORT nor the GARAGE AGREEMENT disclosed any possibility that the ASSOCIATION'S residents would be subject to any usurious fees or costs for accessing their own parking spaces. See Exhibit 3.

69. Furthermore, in trying to conceal this hidden fact, DEVELOPER waited until the day before the first scheduled closing on a condominium unit at the PROPERTY to record the DECLARATION, so that purchasers of condominium units at the PROPERTY had absolutely no opportunity to review the same prior to completing their purchases. See Exhibit 3; Exhibit 4.

70. Purchasers of condominium units at the PROPERTY reasonably relied upon the representations in the PROPERTY REPORT, which did not include the EASEMENT FEE, only to find that, upon completing their purchases, they were subject to the DECLARATION which included the EASEMENT FEE and excluded GARAGE AGREEMENT. See Exhibit 2; Exhibit 3; Exhibit 4.

71. The DECLARATION that was recorded by DEVELOPER (the day before the first scheduled closing on a condominium unit at the PROPERTY) was materially different from the version that was in the PROPERTY REPORT and used in marketing condominium units at the PROPERTY. See Exhibit 2; Exhibit 3; Exhibit 4.

72. In addition to the fraudulent and coercive manner in which the EASEMENT FEE was instituted, the EASEMENT FEE itself is unreasonable and usurious because there is no basis for COMMERCIAL GARAGE OWNER to charge forty five thousand seven hundred twenty dollars

(\$45,720.00) per year for the ASSOCIATION'S residents to access their own parking spaces. See Exhibit 1.

73. What's more, purchasers of condominium units at the PROPERTY had no choice or bargaining power as to the terms of the DECLARATION because they didn't know of its existence and because it was unilaterally drafted and recorded by DEVELOPER. See Exhibit 4.

74. Since DEVELOPER drafted and recorded the DECLARATION, and DEVELOPER controlled the ASSOCIATION prior to "turnover," purchasers of condominium units at the PROPERTY had no way to negotiate its terms. See Exhibit 4.

75. The DECLARATION constitutes a contract of adhesion which is fundamentally unconscionable in its terms.

76. For these reasons, the ASSOCIATION claims that the EASEMENT FEE is unenforceable as a matter of law.

77. COMMERCIAL GARAGE OWNER claims that the EASEMENT FEE is enforceable.

78. In this way, an actual controversy exists between the ASSOCIATION and COMMERCIAL GARAGE OWNER, and by the terms and provisions of 735 ILCS 5/2-701, this Honorable Court is vested with the authority to promptly declare the rights and obligations of the parties hereto and to give such further relief as it deems just and proper under the circumstances.

79. A declaratory judgment will serve a useful purpose in clarifying the parties' rights and obligations under the RECORDED DECLARATION as to the enforceability of the EASEMENT FEE.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter a declaratory judgment order in its favor and against the Defendant, VISION ON STATE PARKING, LLC, an

Illinois limited liability company, confirming that the Easement Fee is unenforceable as a matter of law, and grant such other and further relief as this Honorable Court deems just and proper.

COUNT III - DECLARATORY JUDGMENT AS TO EASEMENT OF NECESSITY
(COMMERCIAL GARAGE OWNER)

62. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 62 of the *Allegations Common to All Counts* of the COMPLAINT, as and for Paragraph 1 through Paragraph 62 of this *Count III* of the COMPLAINT, as though fully set forth and alleged herein.

63. As stated more fully above, the entire PROPERTY was developed as a single mixed-use building complex. See Exhibit 1.

64. The GARAGE is a single building. See Exhibit 1.

65. The GARAGE has only one (1) entrance and only one (1) exit for all vehicles, which are both located on the first (1st) floor. See Exhibit 1.

66. DEVELOPER artificially divided the GARAGE into the CONDOMINIUM GARAGE PROPERTY and the COMMERCIAL GARAGE PROPERTY. See Exhibit 1.

67. Due to the DEVELOPER'S artificial division of the GARAGE, leaving the COMMERCIAL GARAGE PROPERTY with the sole means of ingress and egress, the ASSOCIATION'S residents cannot access their own parking spaces without going through the COMMERCIAL GARAGE PROPERTY, which acts as a toll road. See Exhibit 1.

68. The ASSOCIATION cannot use or enjoy the CONDOMINIUM GARAGE PROPERTY without going through the COMMERCIAL GARAGE PROPERTY, and there is no way to add additional exists or entrances. See Exhibit 1.

69. For these reasons, the ASSOCIATION claims that it has a easement of necessity upon the COMMERCIAL GARAGE PROPERTY to access the CONDOMINIUM GARAGE PROPERTY.

70. COMMERCIAL GARAGE OWNER claims that the ASSOCIATION does not have an easement of necessity upon the COMMERCIAL GARAGE PROPERTY to access the CONDOMINIUM GARAGE PROPERTY.

71. In this way, an actual controversy exists between the ASSOCIATION and COMMERCIAL GARAGE OWNER, and by the terms and provisions of 735 ILCS 5/2-701, this Honorable Court is vested with the authority to promptly declare the rights and obligations of the parties hereto and to give such further relief as it deems just and proper under the circumstances.

72. A declaratory judgment will serve a useful purpose in clarifying the parties' rights and obligations as to the GARAGE.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter a declaratory judgment order in its favor and against the Defendant, VISION ON STATE PARKING, LLC, an Illinois limited liability company, confirming that the ASSOCIATION has an easement by necessity upon the COMMERCIAL GARAGE PROPERTY to access the CONDOMINIUM GARAGE PROPERTY, and grant such other and further relief as this Honorable Court deems just and proper.

COUNT IV - COMMON LAW FRAUD
(DEVELOPER)

62. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 62 of the *Allegations Common to All Counts* of the COMPLAINT, as and for Paragraph 1 through Paragraph 62 of this *Count IV* of the COMPLAINT, as though fully set forth and alleged herein.

63. DEVELOPER prepared and issued the PROPERTY REPORT pursuant to Chapter 13-73 of the *Chicago Municipal Code*. See **Exhibit 3**.

64. DEVELOPER prepared and issued the PROPERTY REPORT to be used as part of the marketing and sales of condominium units at the PROPERTY and issued it to prospective purchasers of condominium units at the PROPERTY. See Exhibit 3; Exhibit 4.

65. In preparing the PROPERTY REPORT, DEVELOPER did not disclose the existence of the EASEMENT FEE. See Exhibit 3; Exhibit 4.

66. At the time DEVELOPER prepared and issued the PROPERTY REPORT, DEVELOPER knew that the DECLARATION would include the EASEMENT FEE.

67. DEVELOPER prepared and executed the DECLARATION. See Exhibit 3.

68. At all times when DEVELOPER was preparing the DECLARATION, DEVELOPER knew that the version of the DECLARATION attached to the PROPERTY REPORT was materially different from the version of the DECLARATION it intended to record.

69. At all times when DEVELOPER was preparing the DECLARATION, DEVELOPER knew that the version of the DECLARATION attached to the PROPERTY REPORT did not disclose the EASEMENT FEE.

70. DEVELOPER, in using the PROPERTY REPORT in the marketing and sales of condominium units at the PROPERTY, intended on purchasers of condominium units at the PROPERTY to rely on the PROPERTY REPORT in determining whether or not to purchase a unit.

71. DEVELOPER knew or should have known that purchasers of condominium units at the PROPERTY would rely on the PROPERTY REPORT in determining whether or not to purchase condominium units at the PROPERTY.

72. DEVELOPER knowingly concealed and/or failed to disclose the existence of the EASEMENT FEE.

73. The aforementioned misrepresentations and/or failures to disclose were made with the intent that purchasers of condominium units at the PROPERTY would rely on them.

74. Purchasers of condominium units at the PROPERTY reasonably relied upon the PROPERTY REPORT in deciding to purchase condominium units at the PROPERTY. See Exhibit 4.

75. Since the DECLARATION was recorded just a few days before the first scheduled closing on a condominium unit at the PROPERTY, purchasers of condominium units at the PROPERTY had no ability or opportunity to view the terms thereof prior to completing their purchases. See Exhibit 2; Exhibit 3; Exhibit 4.

76. DEVELOPER'S misrepresentations and/or omissions as set forth herein constitute fraud against the ASSOCIATION.

77. DEVELOPER'S misrepresentations and/or omissions as set forth herein were willful and wanton because they failed to disclose the EASEMENT FEE in the PROPERTY REPORT.

78. As a direct and proximate result of DEVELOPER'S misrepresentations and/or failures to disclose as set forth herein, the ASSOCIATION has suffered actual damages and losses.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter judgment in its favor and against the Defendant, 13th AND STATE, LLC, an Illinois limited liability company, in an amount to be determined by this Honorable Court, and grant such other and further relief as this Honorable Court deems just and proper.

COUNT V - CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT
(DEVELOPER)

75. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 75 of *Count IV* of the COMPLAINT, as and for Paragraph 1 through Paragraph 75 of this *Count V* of the COMPLAINT, as though fully set forth and alleged herein.

75. The *Illinois Consumer Fraud and Deceptive Business Practices Act* (“CONSUMER FRAUD ACT”), at 815 ILCS 505/2, states that:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

76. DEVELOPER has intentionally violated the CONSUMER FRAUD ACT by employing, *inter alia*, the misrepresentations and/or omissions alleged herein in order to misrepresent and deceive the ASSOCIATION concerning the existence of the EASEMENT FEE.

77. As a direct and proximate result of DEVELOPER’S violation of the CONSUMER FRAUD ACT, the ASSOCIATION has suffered actual damages and losses, including attorneys’ fees and costs.

78. DEVELOPER’S violation of the CONSUMER FRAUD ACT has damaged and injured over two hundred fifty three (253) individuals who purchased condominium units at the PROPERTY.

79. DEVELOPER'S violation of the CONSUMER FRAUD ACT was part of, and in furtherance of, DEVELOPER'S premeditated scheme to defraud consumers by baiting them with the PROPERTY REPORT, and then recording the DECLARATION at the last possible moment.

80. For these reasons, the ASSOCIATION is entitled to punitive damages against DEVELOPER.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter judgment in its favor and against the Defendant, 13th AND STATE, LLC, an Illinois limited liability company, for compensatory and punitive damages in an amount to be determined by this Honorable Court, award the ASSOCIATION its reasonable attorneys' fees and costs, and grant such other and further relief as this Honorable Court deems just and proper.

COUNT VI - BREACH OF FIDUCIARY DUTY
(DIRECTORS)

62. The ASSOCIATION hereby restates, re-alleges, and incorporates by reference, Paragraph 1 through Paragraph 62 of the *Allegations Common to All Counts* of the COMPLAINT, as and for Paragraph 1 through Paragraph 62 of this *Count VI* of the COMPLAINT, as though fully set forth and alleged herein.

63. On or about June 6, 2007, DIRECTORS incorporated the ASSOCIATION pursuant to the NONPROFIT ACT, naming themselves "directors" thereof. A true and accurate copy of the *Articles of Incorporation* for the ASSOCIATION is attached hereto and incorporated herein as **Exhibit 6**.

64. Pursuant to the *General Not-for-Profit Corporation Act of Illinois*, 805 ILCS 105/1 et seq. ("NONPROFIT ACT"), DIRECTORS had a fiduciary duty of care to the ASSOCIATION and its members.

65. Upon information and belief, DIRECTORS were also affiliated with DEVELOPER.
66. BARR was, and still is, the manager of DEVELOPER.
67. DIRECTORS knew that being a director of the ASSOCIATION while being affiliated with DEVELOPER constituted a serious conflict of interest.
68. On or about June 11, 2007, DIRECTORS submitted the ASSOCIATION to the CONDO ACT by recording the DECLARATION. See Exhibit 2.
69. The DECLARATION included the EASEMENT FEE which was materially adverse and unfair to the ASSOCIATION. See Exhibit 2.
70. The DECLARATION included the EASEMENT FEE which was not disclosed in the PROPERTY REPORT. See Exhibit 2; Exhibit 3; Exhibit 4.
71. DIRECTORS knew that the DECLARATION included the EASEMENT FEE which was materially adverse and unfair to the ASSOCIATION. See Exhibit 2; Exhibit 3.
72. DIRECTORS knew that the DECLARATION included the EASEMENT FEE which was not disclosed in the PROPERTY REPORT. See Exhibit 2; Exhibit 3.
73. DIRECTORS breached their fiduciary duty to the ASSOCIATION by recording the DECLARATION even though it included the EASEMENT FEE which was materially adverse and unfair to the ASSOCIATION.
74. DIRECTORS breached their fiduciary duty to the ASSOCIATION by recording the DECLARATION even though it included the EASEMENT FEE which was not disclosed in the PROPERTY REPORT.
75. DIRECTORS' breach of their fiduciary duty to the ASSOCIATION was willful and wanton because they were purposely putting the interests of DEVELOPER above the interests of the ASSOCIATION.

76. DIRECTORS' breach of their fiduciary duty to the ASSOCIATION was willful and wanton because they recorded the DECLARATION when they specifically knew that the ASSOCIATION would be severely damaged and injured by the EASEMENT FEE.

77. As a direct and proximate result of DIRECTORS' breach of their fiduciary duty to the ASSOCIATION, the ASSOCIATION has suffered actual damages and losses, including attorneys' fees and costs.

78. DIRECTORS' breach of their fiduciary duty to the ASSOCIATION was part of, and in furtherance of, DEVELOPER'S premeditated scheme to defraud consumers by baiting them with the PROPERTY REPORT, and then recording the DECLARATION at the last possible moment.

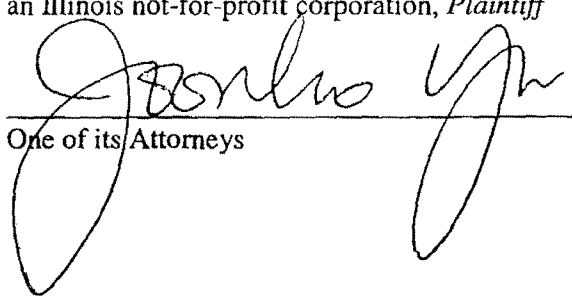
79. For these reasons, the ASSOCIATION is entitled to punitive damages against DIRECTORS.

WHEREFORE, the Plaintiff, VISION ON STATE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, respectfully requests that this Honorable Court enter judgment in its favor and against the Defendants, WARREN BARR, an individual, JIM CARROLL, an individual, and BRIAN COLLINS, an individual, jointly and severally, for compensatory and punitive damages in an amount to be determined by this Honorable Court, award the ASSOCIATION its reasonable attorneys' fees and costs, and grant such other and further relief as this Honorable Court deems just and proper.

Joonho Yu, Esq.
David C. Hartwell, Esq.
PENLAND & HARTWELL, LLC
One North LaSalle Street, 38th Floor
Chicago, Illinois 60602
Tel: (312) 578-5610/Fax: (312) 578-5640
Attorney No. 41563

By:

Respectfully submitted,
VISION ON STATE CONDOMINIUM ASSOCIATION,
an Illinois not-for-profit corporation, *Plaintiff*



One of its Attorneys

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this *Verified Complaint for Declaratory Judgment and Other Relief* are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

VISION ON STATE CONDOMINIUM ASSOCIATION,
an Illinois not-for-profit corporation,

By:



Mary Morrison, Property Manager
DRAPER AND KRAMER, INC.