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Cook County Recorder 39.00



**DECLARATION OF EASEMENTS FOR INGRESS AND EGRESS,
USE RESTRICTION AND
COVENANTS FOR EASEMENT PREMISES**

THIS DECLARATION is made this 24th day of August, 2000 by LaSALLE BANK NATIONAL ASSOCIATION, not personally but solely as successor trustee under Trust Agreement dated 12\5\69 and known as Trust No. 40290 (the "Declarant");

WHEREAS, Declarant is the record owner of Lots 1 and 2 in Oak Forest Industrial Park Addition in Cook County, Illinois, which are legally described on Exhibit A; and

WHEREAS, Lots 1 and 2 which are herein collectively called the "Property" have frontage on 167th Street with Lot 1 also having frontage on Kilbourne Avenue; and

WHEREAS, Lot 1 is about to be sold to Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's"); and

WHEREAS, in connection with sale of Lot 1 to Wendy's, Declarant has agreed to restrict the uses that may be developed on Lot 2; and

WHEREAS, the permitting authorities have determined that there shall be a single access point (curb cut) to the Property from 167th Street and Kilbourne Avenue and that the entrances

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and driveways providing ingress and egress to and from 167th Street and Kilbourne Avenue shall be shared by and be for the benefit of both Lots comprising the Property.

NOW, THEREFORE, Declarant, as the owner of the Property, hereby reserves the following easements and makes the following declaration of covenants and use restrictions:

A. RESERVATION OF NON-EXCLUSIVE EASEMENTS.

1. Declarant hereby reserves for the benefit of the owners from time to time of the Property, their successors, assigns, licensees, tenants, agents, employees, invitees, and guests (collectively the "Grantees"), non-exclusive easements for ingress and egress over and across (a) a strip of land sixty feet long and thirty feet wide with fifteen feet thereof located on Lot 1 and fifteen feet thereof located on Lot 2 extending north from the south line of the Property, and (b) a twenty-four (24) foot wide strip of land extending across the entirety of Lot 1 from Kilbourne Avenue to the west line of Lot 2 which strip is located approximately twenty-seven (27) feet south of the north line of Lot 1 (collectively the "Easement Premises"), for access to and from all buildings, structures, and facilities constructed on the Lots comprising the Property from Kilbourne Avenue and 167th Street, together with the right to enter onto the Easement Premises with such personnel and equipment for the purpose of constructing, maintaining, repairing, renewing, restoring, replacing driveways, roadways, and entrances (curb cuts) within the Easement Premises and for cleaning and removing snow and ice from the driveways, roadways, and entrances located on the Easement Premises. The location of the Easement Premises within the Property is shown on Exhibit B attached hereto.

2. The non-exclusive easements hereby reserved over the Property are subject to any and all easements and restrictions of record. The use and occupation of the Easement Premises by the Grantees of either Lot shall not unreasonably preclude or hinder or impede the use thereof

by the Grantees of the other Lot. No Grantee may alter or change the grade of any portion of the Easement Premises on its Lot to a grade which is not compatible with the grade of the other Lot.

No Grantee shall have the right to change the location of the curb cut on 167th Street or the curb cut on Kilbourne Avenue without first obtaining the consent of the owner of the other Lot.

Nothing in this Declaration shall prevent an owner from constructing improvements on its Lot so long as the necessary approvals are first obtained and the improvements do not restrict access to the Easement Premises.

B. DECLARATION OF COVENANTS.

1. With ownership of each Lot comprising the Property shall go the right to construct, all at the constructing owner's cost and expense, driveways, roadways, and entrances (curb cuts) within the Easement Premises pursuant to permits issued by the permitting authorities. With ownership of each Lot shall also go the obligation to maintain, repair, renew, clean, plow, and salt those driveways, roadways, and entrances (curb cuts) located in the Easement Premises on its Lot as necessary and appropriate for the uses being undertaken on its Lot (collectively "Easement Maintenance"). Each owner shall be responsible for the costs and expenses it incurs for Easement Maintenance for the driveways, roadways, and entrances (curb cuts) located on its Lot.

2. The owner of each Lot shall have the right, but without any right to seek reimbursement therefor, to undertake additional cleaning, snow removal, plowing and salting of the driveways, roadways, and entrances located on the other Lot to meet the needs of its Grantees. Thus, for example if the uses located on Lot 2 are open for business 24 hours a day, seven days a week, and the uses located on Lot 1 are open for fewer hours per day and for less than seven days per week, the owner of Lot 2 may undertake additional snow removal, plowing, and salting at its sole cost and expense. Nothing herein shall prohibit the owners from entering

into joint contracts for Easement Maintenance and agreeing to share the costs therefor amongst themselves upon such basis as they may agree to.

3. Owners may, subject to the limitations herein provided, perform Easement Maintenance on the driveways, roadways, and entrances on Easement Premises not owned by it if the owner thereof fails to perform Easement Maintenance thereon.

Except in cases of an emergency, no owner shall have the right to undertake any Easement Maintenance (other than cleaning, snow removal, plowing and salting) on the other owner's Lot without first giving at least thirty (30) days' prior notice of its intention to perform such Easement Maintenance. In the event the Easement Maintenance described in such notice is not undertaken within the notice period, the owner giving notice may thereafter undertake the Easement Maintenance described in its notice and recover the costs and expenses therefor from the owner of the Lot upon which Easement Maintenance was performed.

4. Amounts incurred for Easement Maintenance undertaken pursuant to Paragraph 3 above shall be due and payable within thirty (30) days after an invoice with supporting documentation is issued. The amount of each invoice shall constitute a lien on the Lot upon which Easement Maintenance was performed until paid. Invoices not paid by the due date herein provided shall bear interest from the date due at rate 15% per annum. Amounts due may be collected by an action at law or by foreclosure of the lien herein provided. All interest, costs of collection, plus reasonable attorneys' fees and disbursements pertaining to collection of unpaid invoices shall be added to the amount of such invoices.

5. Notices of lien when recorded shall be a lien upon the portion of the Property to which it pertains in favor of the owner entitled to payment for Easement Maintenance equal to the amounts due for Easement Maintenance. Such lien shall be prior to any other liens or encumbrances, recorded or not recorded, except only

(a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or Federal taxes which by law are a lien on the interest of such owner prior to pre-existing recorded encumbrances thereof; and

(b) encumbrances on the interest of such owner recorded prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded encumbrances.

When a Lot is sold at a public or private sale in foreclosure, the owner that recorded the notice of lien shall have the power to bid in the amount of the invoice.

C. DECLARATION OF USE RESTRICTION.

Declarant declares that for a period of twenty years from the date this Declaration is recorded in Cook County Lot 2 shall not be used for a McDonald's, Burger King, or Arby's restaurant. The foregoing restriction is for the benefit of the owners and all other Grantees of Lot 1.

D. GENERAL PROVISIONS .

1. Declarant hereby declares that this Declaration and the provision hereof (except for the use restriction which shall terminate after twenty years) shall run with the land and shall inure to the benefit of and be binding upon each and every owner, and his or her respective heirs, representatives, successors, purchasers, lessees, grantees and mortgagees.

2. Any reference in deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation or transfer, of either Lot to this Declaration shall cause the easements, restrictions, and covenants herein contained to be binding upon any such grantee, mortgagee or

trustee and their successors and assigns as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

3. Notices provided for in this Declaration shall be in writing and shall be addressed to an owner other than the Declarant at the address specified in the instrument conveying a portion of the Property to such owner unless by notice a different address is designated. Notices shall be deemed to have been properly served when mailed, postage prepaid, certified mail or registered mail, return receipt requested, to the last known address of the addressee and shall be deemed received five days after mailing.

4. If any provision of this Declaration shall be held invalid it shall not affect the validity of the remainder of the Declaration. If any provision of the Declaration is deemed to violate the rule against perpetuities or any other rule, statute or law imposing time limitations, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of ELIZABETH II, QUEEN OF ENGLAND, plus twenty-one (21) years thereafter. The provisions of this Declaration shall be liberally construed to effectuate the intentions and purposes of Declarant.

5. The Declaration is executed by LaSalle Bank, not personally but as Trustee, and solely in the exercise of the powers conferred upon it as such Trustee. This instrument is executed on the express condition that nothing herein contained shall be construed as creating any liability whatsoever against said Trustee personally. This instrument is executed and delivered by and shall be binding upon such Trustee and any subsequent trustee, not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee, and that all personal liability of said Trustee and of any subsequent trustees, or every sort, if any, is hereby expressly waived by all owners.

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IN WITNESS WHEREOF, the Declarant has affixed its hand and seal hereto as of the date first above written.

LaSALLE BANK NATIONAL ASSOCIATION,
not personally but as Trustee as aforesaid

By: Peta A. Edwards,

ATTEST:

Attestation not required by
LaSalle Bank National Association
Bylaws

By: _____

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, PATRICIA K. HOLTRY, a Notary Public in and for said County, in the State aforesaid, do hereby certify that RETA A. EDWARDS, personally known to me to be the ~~Trust Officer~~ President of LaSalle Bank, and _____, personally known to me to be the _____ Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ~~Trust Officer~~ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said _____ Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of August 2000.

Patricia K. Holtry
Notary Public

My commission expires _____

This was prepared by and is to be returned to:

Nicole L. Inman
GOULD & RATNER
222 North LaSalle Street
Chicago, Illinois 60606
(312) 236-3003



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EXHIBIT A

The Property

Lots 1 and 2 in Oak Forest Industrial Park Addition, a resubdivision of Lots 20 thru 23 inclusive, the South one-half of Lot 19, and vacated portion of 165th St., in Arthur T. McIntosh and Company's Southtown Farms Unit No. 7, and part of the Southeast Quarter of Section 22, Township 36 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Corner of 167th and Kilbourn

PIN: 28-22-405-030

28-22-405-031

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EXHIBIT B

The Easement Premises

Ingress and egress easement over part of Lots 1 and 2 in Oak Forest Industrial Park Addition, described as follows:

Commencing at the Northeast corner of said Lot 1; thence South 00 Degrees 58 Minutes 25 Seconds West along the East line of said Lot 1, a distance of 25.48 feet to the point of beginning; thence continuing South 00 Degrees 58 Minutes 25 Seconds West along said East line, 24.01 feet; thence South 89 Degrees 42 Minutes 38 Seconds West, 175.57 feet to the West line of said Lot 1; thence North 00 Degrees 17 Minutes 22 Seconds West along said West line, 24.00 feet; thence North 89 Degrees 42 Minutes 38 Seconds East, 176.09 feet to the point of beginning;

Together with the South 60.00 feet of the East 15.00 feet of said Lot 1 (as measured at right angles to the South and East lines thereof);

Together with the South 60.00 feet of the West 15.00 feet of said Lot 2 (as measured at right angles to the South and West lines thereof);

All in Cook County, Illinois.

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