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Eugene "Gene" Moore Fee: \$42.50
Cook County Recorder of Deeds
Date: 11/15/2004 11:29 AM Pg: 1 of 10

AMENDMENT OF EASEMENT AGREEMENT

ADDRESS:

2226 N. Burling, Units 1-4, A & B, Chicago, Illinois 60614

AND

2228 N. Burling, Chicago, Illinois 60614

PINS:

14-33-107-046-1001

14-33-107-046-1002

14-33-107-046-1003

14-33-107-046-1004

14-33-107-046-1005

14-33-107-046-1006

14-33-107-022-0000

PREPARED BY AND AFTER RECORDING RETURN TO:

MATTHEW B. BROTSCHUL
SMH DEVELOPMENT LLC
2900 N. HERMITAGE
CHICAGO, ILLINOIS 60657



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AMENDMENT OF EASEMENT AGREEMENT

THIS AMENDMENT OF EASEMENT AGREEMENT (this "Amendment") is entered into as of the 1st day of November, 2004, by and among 2228 N. Burling LLC, an Illinois limited liability company ("2228 LLC"); Scott R. Maesel ("Maesel"); Janette D. Damian ("Damian"); Timothy J. Hartnett ("Hartnett"); Gregory Colgan ("Colgan") and The 2226 N. Burling Condominium Association (the "Association," together with Maesel, Damian, Hartnett and Colgan, collectively, the "2226 Owners").

RECITALS

WHEREAS, 2228 LLC is the owner of that certain real property commonly known as 2228 N. Burling, Chicago, Illinois 60614, and more accurately legally described on Exhibit A, attached hereto and incorporated herein (the "2228 Parcel"); and

WHEREAS, the 2226 Owners are the owners of that certain real property commonly known as 2226 N. Burling, Chicago, Illinois 60614 and 2226 N. Burling, Units 1-4 (inclusive), Chicago, Illinois 60614, and more accurately legally described on Exhibit B, attached hereto and incorporated herein (collectively, the "2226 Parcel"); and

WHEREAS, that certain Easement Agreement, dated September 13, 1979, and recorded with the Cook County Recorder on October 12, 1979 as Document No. 25190195 (the "Easement Agreement") encumbers the 2228 Parcel and the 2226 Parcel and serves to (i) create a shared walkway (the "Shared Walkway") running between the 2226 Parcel and the 2228 Parcel; (ii) allow the existence of a balcony on the 2228 Parcel which supported by steel and wooden beams which are connected to the improvements located on the 2226 Parcel; and (iii) grant unto the 2226 Owners the right to use the balcony located on the 2228 Parcel; and

WHEREAS, 2228 LLC desires to demolish the current improvements (including the aforementioned balcony) located on the 2228 Parcel and construct in its place a single family residence; and

WHEREAS, the parties desire to amend the Easement Agreement to allow for the removal of the balcony, as more specifically set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Removal of the Balcony.** The Easement Agreement is hereby amended so as to (i) remove any rights the 2226 Owners have to utilize the balcony currently located on the 2228 Parcel (which is supported by steel and wooden beams attached to the improvements located on the 2226 parcel) and (ii) allow 2228 LLC the right to remove (and not replace) the aforementioned balcony. In connection with the removal of such balcony, 2228 LLC shall have the right to remove the steel and wooden beams which support the said

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balcony and cause such beams to be cut flush to the improvements currently located on the 2226 Parcel. Furthermore, the 2226 Owners acknowledge the receipt of engineer's letter authorizing the removal of the balcony and removal of the support beams. 2228 LLC hereby agrees that the removal of the balcony, removal of the beams and patch of the improvements located on the 2226 Parcel shall be completed per the process set forth in the aforementioned engineer's letter and to the reasonable satisfaction of the 2226 Owners.

2. Agreement to Repair. The 2226 Owners acknowledge that, during the demolition by 2228 LLC of the improvements currently located on the 2228 Parcel and/or the construction by 2228 LLC of a single family residence thereon, 2228 LLC may (i) damage the concrete walkway located on the northern border of the 2226 Parcel and the southern border of the 2228 Parcel and (ii) block off that portion of the said concrete walkway located on the 2228 Parcel. In the event of such damage which is caused by 2228 LLC, 2228 LLC shall cause such concrete walkway to be repaired at its sole cost and expense. Furthermore, 2228 LLC agrees to use its reasonable efforts to cause any blockage of the concrete walkway to be as temporary in nature as reasonably possible. Any such temporary blockage shall not impair the 2226 Owners ingress and egress to and from the 2226 Parcel from the walkway on the northern border of the 2226 Parcel.

3. Installation of Gates. During the construction of the single family residence on the 2228 Parcel, 2228 LLC, at its sole cost and expense, shall install gates on the east and west end of the concrete walkway contemplated in the Easement Agreement. The aforementioned gates shall be custom made, constructed of black wrought iron and of the variety typically used by the affiliates of 2228 LLC in the construction of "high end" single family residences. Notwithstanding anything contained herein, 2228 LLC shall cause said gates to be installed within eighteen (18) months from the date hereof.

4. Maintenance. During the period of construction (subject to Paragraph 2 above) on the 2228 Parcel (subject to Paragraph 2 above), 2228 LLC shall, at its sole cost and expense, keep the Shared Walkway free of all construction materials and supplies.

5. Indemnity. 2228 LLC shall indemnify, defend and hold harmless the 2226 Owners from and against any and all claims, losses, damages, injuries and fees (collectively "Claims"), arising from the death or any accident, occurrence, injury, loss or damage whatsoever caused to any person or the property of any person as shall occur on the Shared Walkway as a result of the negligent or willful conduct of 2228 LLC, anyone working directly or indirectly for 2228 LLC, or anyone working on the construction project relating to the 2228 Burling Property. Additionally 2228 LLC shall indemnify, defend and hold harmless the 2226 Owners from and against any Claims or damages resulting to the 2226 Parcel resulting from the removal of the Balcony and its supports.

6. Conflict and Survival. Shall the terms of this Amendment conflict with the terms of the Easement Agreement, the terms of this Amendment shall control; provided however, unless specifically amended by the terms of this Amendment, the terms of the Easement Agreement shall survive.

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7. Binding Effect. The grant of terms contained herein shall run with the respective lands and shall be binding on and shall inure to the benefit of the parties hereto, their respective heirs, successors in interest, personal representatives, and assigns.

8. Entire Agreement. This Amendment, together with the Easement Agreement, contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Any modification of this Agreement must be in writing and must be signed by both parties.

9. Choice of Law. This Agreement shall be construed and governed according to the laws of the State of Illinois.

10. Attorneys' Fees, Costs. In the event suit is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover all of its reasonable costs and expenses incurred in connection therewith, including but not limited to its court costs and reasonable attorneys' fees.

11. Termination. Thirty (30) days after the delivery of written notice by the 2226 Owners (delivered by certified mail, return receipt requested) to 2228 LLC (or its then successor in interest), the 2226 Owners may unilaterally terminate the Easement Agreement. Any costs relating to the termination of the Easement Agreement (specifically including but not limited to the relocation of any gates or fences between the 2226 Parcel and the 2228 Parcel) shall be paid solely by the 2226 Owners.

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IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year first above written.

2228 LLC:

2228 N. BURLING LLC,
an Illinois limited liability company

By: *Scott M. Huen*
Its: Authorized Signatory

2226 OWNERS:

The 2226 N. Burling Condominium Association

By: *Timothy J. Hartnett*
Its: Association President

Scott R. Maesel
Scott R. Maesel

Janette D. Damian
Janette D. Damian

Timothy J. Hartnett
Timothy J. Hartnett

Gregory Colgan
Gregory Colgan

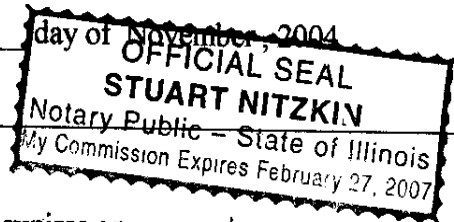
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ACKNOWLEDGEMENT

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 **Seth M. Harris, authorized signatory of 2228 N. Burling LLC, an Illinois limited liability company**, appeared before me in person and acknowledged that they signed and delivered the foregoing instrument as his free and voluntary act and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th



Notary Public

My commission expires on

Stuart Nitzkin

ACKNOWLEDGEMENT

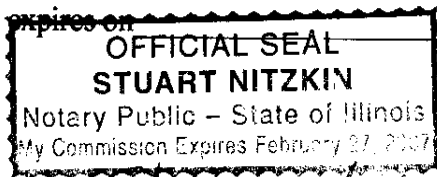
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT **Scott R. Maesel**, appeared before me in person and acknowledged that they signed and delivered the foregoing instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of November, 2004.

Notary Public

My commission expires on



Stuart Nitzkin

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ACKNOWLEDGEMENT

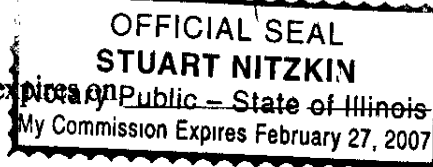
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT **Janette D. Damian**, appeared before me in person and acknowledged that they signed and delivered the foregoing instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of November, 2004.

Notary Public

My commission expires on _____



ACKNOWLEDGEMENT

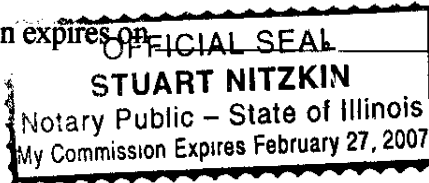
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT **Timothy J. Hartnett**, appeared before me in person and acknowledged that they signed and delivered the foregoing instrument as his free and voluntary act, for the uses and purposes therein set forth. *on behalf of the Condominium Association.*

Given under my hand and notarial seal this 11th day of November, 2004.

Notary Public

My commission expires on _____



ACKNOWLEDGEMENT

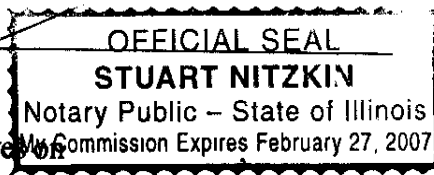
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT *Gregory Colgan*, appeared before me in person and acknowledged that they signed and delivered the foregoing instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of November, 2004.

Stuart Nitzkin
Notary Public



My commission expires on

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EXHIBIT A

LEGAL DESCRIPTION OF THE 2228 PARCEL

LOT 38 IN THE SUBDIVISION OF THE WEST HALF OF BLOCK 9 IN THE CANAL TRUSTEE'S
SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPLE MERIDIAN, IN COOK COUNTY
ILLINOIS.

Property of Cook County Clerk's Office

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EXHIBIT B

LEGAL DESCRIPTION OF THE 2226 PARCEL

UNIT NUMBER 1, 2, 3, 4 & Garage Units A & B IN 2226 NORTH BURLING CONDOMINIUM,
AS
DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOT 37 IN THE SUBDIVISION OF THE WEST HALF OF BLOCK 9 IN THE CANAL TRUSTEE'S
SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPLE MERIDIAN; WHICH
SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM
RECORDED
AS DOCUMENT 25190196; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN
THE
COMMON ELEMENTS, IN COOK COUNTY ILLINOIS.

TOGETHER WITH:

LOT 37 IN THE SUBDIVISION OF THE WEST HALF OF BLOCK 9 IN THE CANAL TRUSTEE'S
SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPLE MERIDIAN, IN COOK COUNTY
ILLINOIS.

Property of Cook County Clerk's Office