

UNOFFICIAL COPY

Instrument prepared by, and after
recording mail to:
David H. Sachs, Aronberg
Goldgehn Davis & Garmisa
330 North Wabash
Suite 3000
Chicago, Illinois 60611



Doc#: 0614632045 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/26/2008 11:26 AM Pg: 1 of 17

Property of Cook County Clerk's Office

(Above space for recording information)

RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT

This **RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT**
("Agreement") is made as of this 26th day of May, 2006, by and between **EVERGREEN**
PROPERTIES L.L.C., an Illinois limited liability company ("Evergreen") and **1422 N.**
KINGSBURY LLC, an Illinois limited liability company ("1422").

RECITALS

- A. On or about April 28, 2000, Evergreen acquired title to the real property legally described on Exhibit A attached hereto and incorporated herein by this reference ("Property") together with all improvements located thereon.
- B. On or about May 25, 2006, Evergreen conveyed title to that portion of the Property legally described on Exhibit B attached hereto and incorporated

Box 231

UNOFFICIAL COPY

herein by this reference (“Warehouse Parcel”), retaining title to the balance of the Property, which is legally described on Exhibit C attached hereto and incorporated herein by this reference (“Building Parcel”).

- C. The Warehouse Parcel, which is commonly known as 1422 North Kingsbury, Chicago, Illinois, is currently improved with a one story concrete block and metal siding building (“Warehouse Building”).
- D. The Building Parcel, which is commonly known as 860 West Evergreen, Chicago, Illinois, is currently improved with a three story brick office building (“Office Building”).
- E. The northwesterly wall of the Office Building (the “Wall”) is located on the Building Parcel, constitutes the southeasterly wall of the Warehouse Building and provides support to such building. Accordingly, the parties desire to create limited easement rights in favor of the owner, mortgagee, tenants and invitees of the Warehouse Parcel (the “Warehouse Parcel Benefited Parties”) with respect to the Wall to delineate their rights and obligations with respect to the common use, maintenance and repair thereof.
- F. There is a common connection point for electrical and gas service (“Utility Connection Point”) to the Warehouse Building and the Office Building which is currently located adjacent to the transformer on the southeast wall of the Office Building. The electrical wires and gas lines distributing such utility services to the Warehouse Building (“Distribution Facilities”)

UNOFFICIAL COPY

run on, over, across, under and through the Office Building at various locations known primarily to the utility service providers. As such, 1422 desires to obtain from Evergreen, and Evergreen is willing to grant to 1422, an easement in favor of the Warehouse Parcel to provide for the continued location of the Utility Connection Point on the Building Parcel, the use of the same by the owner and occupants of the Warehouse Parcel, the continued distribution of the foregoing utility services and delineate the parties' obligations with respect to the maintenance and repair of the Distribution Facilities.

- G. Presently, access to various portions of the Office Building is gained directly through an entryway lobby ("Lobby") located on the northeasterly side of the Warehouse Building. In addition, access to certain other areas in the Office Building is gained through the use of the Lobby and a connected uncovered and undemised walkway (approximately six feet wide) located northwesterly of the Lobby ("Walkway"). The present approximate locations of the Lobby and the Walkway are depicted on Exhibit D attached hereto and incorporated herein by this reference. As such, Evergreen desires to obtain for the benefit of the Building Parcel, its owner, mortgagees, tenants and invitees ("Building Parcel Benefited Parties"), and 1422 is willing to grant, an easement in favor of the Building Parcel Benefited Parties, to provide access to the Office Building through the Lobby and the Walkway.

UNOFFICIAL COPY

STATEMENT OF AGREEMENT

In consideration of the foregoing Recitals, all of which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Evergreen and 1422, Evergreen and 1422 do hereby agree as follows:

The Wall.

Evergreen gives and grants to the Warehouse Parcel Benefited Parties a limited, non-exclusive easement, on, over and across such portion of the Building Parcel as may be necessary to locate and maintain the Wall (in its present location as the southeastern wall of the Warehouse Building in its present configuration), and repair and maintain the same (as hereinafter required). The rights conferred to the Warehouse Parcel Benefited Parties under this paragraph shall include the right to use the Wall now or hereafter located or erected on the Warehouse Parcel, but only for the term of the easement. The easement herein granted shall terminate on the first to occur of: (a) such time as 1422 demolishes all or substantially all of the Warehouse Building; (b) ninety (90) days after Evergreen notifies 1422, in writing, that it, in good faith, intends to demolish all or substantially all of the Office Building or the Wall; (c) loss by fire or other casualty of a substantial part of either the Office Building or Warehouse Building which is not restored within 120 days; or (d) the mutual agreement of the owners of the Building Parcel and the Warehouse Parcel ("Termination Date").

UNOFFICIAL COPY

Until the Termination Date, the owner of the Building Parcel shall maintain, repair and replace (if necessary) the Wall in good condition and repair at its sole cost and expense. The foregoing notwithstanding, if any maintenance, repair or replacement of the Wall is required to be made as a result of any damage caused by any Warehouse Parcel Benefited Party or by any occupant, licensee, invitee, representative, agent, associate, affiliate, employee, contractor or subcontractor of any Warehouse Parcel Benefited Party, then the owner of the Warehouse Parcel shall be solely responsible for the cost of such maintenance, repair or replacement.

To carry out their respective obligations under this Section 1, each party hereto shall have, and there is hereby granted by each party to the other, a limited, non-exclusive easement on, over and across the property of such granting party for such limited purpose.

2. Use and Maintenance of the Utility Connection Point and Distribution Facilities. It is agreed that the owner of the Building Parcel will maintain, repair and replace (as necessary), the Utility Connection point. Until the earlier of: (a) the Termination Date; or (b) such time as the Warehouse Building no longer needs or desires to use the Utility Connection Point, the owners from time to time of the Building Parcel and the Warehouse Parcel shall equally share such costs of maintenance, repair and replacement.

UNOFFICIAL COPY

As the Distribution Facilities only serve the Warehouse Building until the earlier of: (a) the Termination Date; or (b) such time as the Warehouse Building no longer needs or desires to use the Distribution Facilities, the owner of the Warehouse Parcel shall pay maintain, repair and replace (as necessary) the Distribution Facilities at its sole cost and expense. To the extent there are other electrical wires or gas lines distributing electrical or gas services and such wires or lines do not exclusively serve either the Warehouse Building or the Office Building ("Common Distribution Facilities"), then such wires or lines shall be maintained, repaired or replaced (as necessary) by the owner of the Building Parcel and the cost of the same shall be shared equally by the owners from time to time of the Building Parcel and the Warehouse Parcel.

To carry out their respective obligations under this Section 2, Evergreen hereby declares, creates and grants to the Warehouse Parcel Benefited Parties a non-exclusive easement on, over, across and through the Building Parcel and the Office Building solely for the purposes of: (a) using the Utility Connection Point, the Common Distribution Facilities and the Distribution Facilities to supply electricity and gas services to the Warehouse Parcel and the Warehouse Building; and (b) performing its obligations under this Section 2. 1422 hereby declares, creates and grants to the Building Parcel Benefited Parties a non-exclusive perpetual easement on, over, across and through the Warehouse Parcel and the

UNOFFICIAL COPY

Warehouse Building solely for performing its obligations under this Section 2.

The foregoing easements shall expire on the earlier of: (a) the Termination Date; or (b) such time as the Warehouse Building no longer needs or desires to use the Utility Connection Point and the Distribution Facilities.

3. Lobby and Walkway Easement. 1422 does hereby declare, create and grant to Building Parcel Benefited Parties a non-exclusive, perpetual, easement on, over, across and through the Lobby and Walkway solely to permit such Building Parcel Benefited Parties and their respective, licensees, invitees, agents and guests (collectively with the Building Parcel Benefited Parties herein termed "Occupants"), to gain access to the Office Building. The use of the Lobby and Walkway easement is limited to pedestrian ingress and egress only and for the incidental delivery of packages to the Occupants.

The foregoing easement may be terminated or suspended for any period of time, upon sixty (60) days prior written notice from the owner of the Warehouse Parcel to the owner of the Building Parcel, so long as the Occupants can gain access to the Office Building during any suspension, or following any termination, through another public means of ingress and egress.

The owner of the Warehouse Parcel reserves the right to, from time to time, expand or contract the size of the Lobby (including the atrium) or

UNOFFICIAL COPY

Walkway, or otherwise modify the structure or appearance of the same, or cover or uncover the Walkway, all without the consent of the owner of the Building Parcel so long as any such expansion or contraction of the size of the Lobby does not materially impede pedestrian ingress and egress to the Office Building and the incidental delivery of packages to the Occupants..

4. Easements Run with the Land. All easements and rights described herein are perpetual, non-exclusive, easements appurtenant to and running with the land, in full force and effect until such time as they terminate, expire by their respective terms and at all times, until they expire, shall inure to the benefit of, and be binding upon, any and all successors or assigns of Evergreen and 1422, and any owner, purchaser, mortgagee, or any other person having an interest in the Building Parcel, the Office Building, the Warehouse Parcel or the Warehouse Building, or any portion of any of the foregoing.
5. Reservations. The grantor of any easement hereunder reserves the right to use their respective real property and the improvements thereon for any purpose whatsoever, so long as such use does not substantially interfere with the right of any benefited party hereunder to use any of the easements contemplated herein.
6. Indemnification. Evergreen and 1422 shall each indemnify and save harmless the other, and their respective, members, managers, officers, agents, employees successors and assigns, from and against any and all

UNOFFICIAL COPY

claims, costs, liabilities, damages, judgments and litigation together with any attorneys' fees and costs incurred in connection with the foregoing, asserted against the other, on account of injury to or death of any person or persons whomsoever, or on account of damage to any property, or on account of, caused by, connected with, or attributable to any act or omission by the grantee of any easement herein, or its mortgagees, tenants, occupants, invitees, customers, clients, guests, contractors, agents in the use of any easement granted hereunder, or that might arise as a consequence of a negligent or willful act or omission in or about the Easement Area exercising their rights or while carrying out any of its or their obligations hereunder. Such indemnifying party shall also undertake the defense of the grantor of any easement under this Agreement ("Indemnitee"), and its respective members, managers, officers, agents, employees, successors and assigns in any such litigation, if Indemnitee requests indemnifying party to do so. Prior to commencement of any maintenance, repair or replacement obligations hereunder in an Easement Area, an indemnifying party shall maintain, or cause its contractor to maintain, insurance with limits of not less than the combined single limit of \$1,000,000 for bodily injuries to or death of one or more persons and/or property damage sustained by one or more organizations as a result of any one occurrence and workers' compensation insurance with applicable state benefits and employer's liability of not less than \$500,000, if available.

UNOFFICIAL COPY

7. Partial Invalidity. If any term, provision, condition or covenant contained in this Agreement shall, to any extent be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this document (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is held invalid or enforceable) shall not be affected thereby, and each and every other term, provision and condition of this grant shall, nevertheless, remain in full force and affect.
8. Remedies/Attorneys Fees. 1422 and Evergreen shall be permitted to exercise all available rights and remedies against the other in the event of any default of the other hereunder. In the event that Evergreen or 1422 shall institute any action or proceeding against the other or others, in an attempt to enforce the provisions of this Agreement or any default hereunder, then, in that event, the non-prevailing party therein shall pay to the prevailing party, the reasonable attorneys fees and costs and expenses of that litigation (including those pertaining to an appeal from any final and appealable court order) incurred therein by the prevailing party.
9. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.
10. Captions. The captions of the sections and paragraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or condition

UNOFFICIAL COPY

11. Amendment. This Agreement may be amended, modified, restated or terminated only by a writing executed by all parties owning the Warehouse Parcel, the Warehouse Building, the Building Parcel and the Office Building. Any such instrument which amends, modifies, restates or terminates this Agreement, shall only be effective upon the filing of the same for record in the Office of the Recorder of Deeds of Cook County, Illinois.
12. Payment. Within ten (10) days ("Due Date") after receipt of an invoice or other evidence that reasonably reflects that a sum of money is due the other pursuant to the provisions of this Agreement, Evergreen or 1422, as the case may be, shall pay to the other all such amounts due. Any sums not paid by the Due Date shall accrue interest, until paid, at the rate of eighteen percent (18%) per annum. The failure to pay any amount due shall not result in a lien against the Warehouse Parcel or the Building Parcel.
13. Binding Obligation. The obligations of Evergreen and 1422 hereunder shall be binding upon their respective successors, assigns and successors-in-title, as the contacts may require.
14. Notices. All notices required or desired to be provided under this Agreement shall be in writing and shall be sent by personal delivery, overnight courier or certified United States Mail, return receipt requested and postage pre-paid. All notices to Evergreen shall be addressed to

UNOFFICIAL COPY

Evergreen Properties LLC, 216 W. Chicago Avenue, Chicago, Illinois 60610, Attention: Thomas Melk, or such other place as Evergreen may from time to time designate in writing. All notices to 1422 shall be addressed to 1422 Evergreen LLC, 216 W. Chicago Avenue, Chicago, Illinois 60610, Attention: Thomas Melk, or such other place as 1422 may from time to time designate in writing.


IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper Officers hereunto duly authorized as of the day and year first above written.

EVERGREEN:


1422:

EVERGREEN PROPERTIES L.L.C.,
an Illinois limited liability company
By: Evergreen Properties Management, Inc.
an Illinois corporation, its Manager

1422 N. KINGSBURY LLC,
an Illinois limited liability company
By: Evergreen Properties Management, Inc.,
an Illinois corporation, its Manager

By: 

Thomas J. Melk, President

By: 

Thomas J. Melk, President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Kimberly A. Carten, a Notary Public, in and for said County in the State aforesaid, do hereby certify that Thomas J. Melk, the President of Evergreen Properties Management, Inc., an Illinois corporation, the Manager of Evergreen Properties L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of May, 2006.

Kimberly A. Carten
Notary Public

My Commission Expires: July 31, 2006

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



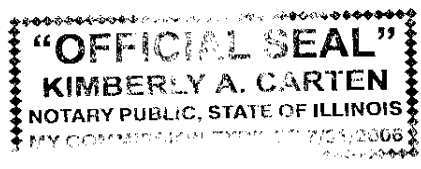
I, Kimberly A. Carten, a Notary Public, in and for said County in the State aforesaid, do hereby certify that Thomas J. Melk, the President of Evergreen Properties Management, Inc., an Illinois corporation, the Manager of 1422 N. Kingsbury LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of May, 2006.

Kimberly A. Carten
Notary Public

My Commission Expires: July 31, 2006

386121.8



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 7, BOTH INCLUSIVE IN BLOCK 62 IN CHICAGO LAND CO'S RESUBDIVISION OF BLOCKS 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 AND 84 AND LOT 1 OF BLOCK 50 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION OF THE WAREHOUSE PARCEL

LOTS 1, 2, 3 AND THE NORTHWESTERLY 49.05 FEET OF LOT 4, IN BLOCK 62 IN CHICAGO LAND COMPANY'S RESUBDIVISION OF BLOCKS 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74, 84 AND LOT 1 OF BLOCK 50 ALL IN ELSTON'S ADDITION TO CHICAGO, IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

LEGAL DESCRIPTION OF THE BUILDING PARCEL

THE SOUTHEASTERLY 0.95 FEET OF LOT 4 AND LOTS 5, 6 AND 7, IN BLOCK 62 IN CHICAGO LAND COMPANY'S RESUBDIVISION OF BLOCKS 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74, 84 AND LOT 1 OF BLOCK 50 ALL IN ELSTON'S ADDITION TO CHICAGO, IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "D"

APPROXIMATE LOCATIONS OF THE LOBBY AND WALKWAY

