

UNOFFICIAL COPY



Doc#: 1011644074 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee:\$10.0
Cook County Recorder of Deeds
Date: 04/26/2010 12:35 PM Pg: 1 of 11

This instrument was prepared by
and after recording return to:

Joel E. Resnick
Much Shelist
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606-1615
(312) 521-2669

Street Address:
See Exhibits A and B

PIN: See Exhibits A and B

ABOVE SPACE FOR RECORDER'S USE ONLY

CROSS EASEMENT AND MAINTENANCE AGREEMENT

THIS CROSS EASEMENT AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of this 6th day of April, 2010 (the "Effective Date"), by and between **1513 NORTH MILWAUKEE, LLC**, an Illinois limited liability company (the "**1513 Owner**"), and **1471 N. WICKER PARK BLVD., LLC**, a Delaware limited liability company (the "**1515 Owner**").

RECITALS

A. The 1513 Owner is the owner of that certain real property situated in the City of Chicago, County of Cook, State of Illinois, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("**Parcel A**") and which has a common street address of 1513 North Milwaukee Avenue, Chicago, Illinois.

B. The 1515 Owner is the owner of that certain real property situated in the City of Chicago, County of Cook, State of Illinois, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference ("**Parcel B**") and which has a common street address of 1515 North Milwaukee Avenue, Chicago, Illinois.

C. Each of Parcel A and Parcel B is improved with a four (4) story commercial and residential building (individually a "**Building**" and collectively, the "**Buildings**"). The Buildings are adjacent to each other but do not share a party wall.

8497964-Da-Tms (1M4)

UNOFFICIAL COPY

D. Attached to the exterior of the façade of the Buildings is a four (4) story brick and steel outdoor porch structure (the "**Porch Structure**"), a portion of which straddles the property line between Parcel A and Parcel B.

E. The Owners desire to enter into this Agreement to provide for the repair, maintenance and replacement of the Porch Structure.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the 1513 Owner and the 1515 Owner hereby covenant and agree that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

AGREEMENTS

1. Definitions. For purposes hereof:

(a) The term "**Owner**" or "**Owners**" shall mean the 1513 Owner (as to Parcel A) and the 1515 Owner (as to Parcel B) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "**Parcel**" or "**Parcels**" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on Exhibits "A" and "B", that is, Parcel A and Parcel B, and any future subdivisions thereof.

(c) The term "**Permittees**" shall mean the tenant(s), owner(s) or occupant(s) of a Parcel or any portion thereof, and the respective employees, agent's contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s), owner(s) or occupant(s).

2. Repair, Maintenance and Replacement.

(a) Each Owner shall be responsible, at its sole cost and expense, for the repair, maintenance and replacement of all component parts of the Porch Structure which are entirely on or over the Parcel owned by such Owner and shall promptly and in a good and workmanlike manner perform all such repair, maintenance and replacement work. In addition, each Owner shall be responsible, at its sole cost and expense, for the repair, maintenance and replacement of the Building on the Parcel owned by such Owner and each Owner shall, to the extent reasonably practicable, ensure that the exterior appearance of its Building shall match and conform to the exterior appearance of the other Building.

(b) The Owners shall share equally in the cost and expense of the repair, maintenance and replacement of all component parts of the Porch Structure which straddle the property line between the Parcels. The Owners shall cooperate with one another in connection with all decisions relative to such work.

UNOFFICIAL COPY

3. Easement. Each Owner hereby grants to the other Owner a perpetual, non-exclusive easement on, over, above and across the Parcel of such granting Owner for purposes of allowing the other Owner to perform its repair, maintenance and replacement obligations under Section 2 of this Agreement. The exercise of such easement rights by each Owner and its respective Permittees shall not unreasonably interfere with, obstruct or delay the conduct and operations of the use of the Parcel by the other Owner or its Permittees.

4. Condominium Conversion. If a Parcel, or any portion of a Parcel, is converted to the condominium form of ownership, then the condominium association for such Parcel or partial Parcel, and not the individual owners of condominium units in such condominium, shall be responsible for performance of all of the Owner's obligations under this Agreement.

5. Remedies and Enforcement.

5.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

5.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), or any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by JP Morgan Chase Bank (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, and/or (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

5.3 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

5.4 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

6. Term. The provisions, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Cook County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B; provided, if a Parcel, or any portion of a Parcel, is converted to the condominium form of ownership, then the consent of condominium association for such Parcel or partial

UNOFFICIAL COPY

Parcel, and not the consent of all of the individual owners of condominium units in such condominium, shall be required in connection with the modification, amendment, cancellation or termination of this Agreement.

7. Miscellaneous.

7.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7.2 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

7.3 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

7.4 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

7.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

7.6 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

7.7 Separability. Each provision of this Agreement and the application thereof to Parcel A and Parcel B is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

UNOFFICIAL COPY

7.8 Time of Essence. Time is of the essence of this Agreement.

7.9 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

7.10 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Parcel A Owner, the Parcel B Owner are as follows:

Parcel A Owner: 1513 N. Milwaukee
Chicago, Illinois 60622

Parcel B Owner: 1440 N. Kingsbury, Suite 113
Chicago, Illinois 60642

7.11 Governing Law. The laws of the State of Illinois shall govern the interpretation, validity, performance, and enforcement of this Agreement.

7.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Cross Easement and Maintenance Agreement as of the Effective Date.

PARCEL A OWNER:

1513 NORTH MILWAUKEE, LLC,
an Illinois limited liability company

By: *Deanna Zivkovic*
Deanna Zivkovic, its manager

PARCEL B OWNER

1471 N. WICKER PARK BLVD., LLC,
a Delaware limited liability company

By: _____
Steven J. Livaditis, its manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Cross Easement and Maintenance Agreement as of the Effective Date.

PARCEL A OWNER:

1513 NORTH MILWAUKEE, LLC,
an Illinois limited liability company

By: _____
Deanna Zivkovic, its manager

PARCEL B OWNER:

1471 N. WICKER PARK BLVD., LLC,
a Delaware limited liability company

By: _____
Stephen J. Livaditis, its manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

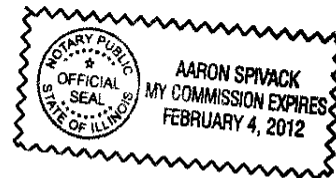
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Deanna Zivkovic, personally known to me to be the manger of **1513 NORTH MILWAUKEE, LLC**, an Illinois limited liability company, 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 said instrument pursuant to authority given by the Members of the company as his own 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 official seal as of April 6, 2010.

Aaron Spivack
Notary Public

SEAL



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 _____, personally known to me to be the manger of **1471 N. WICKER PARK BLVD., LLC**, a Delaware limited liability company, 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 said instrument pursuant to authority given by the Members of the company as his own 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 official seal as of _____, 2010.

Notary Public

SEAL

UNOFFICIAL COPY

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 _____, personally known to me to be the manger of **1513 NORTH MILWAUKEE, LLC**, an Illinois limited liability company, 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 said instrument pursuant to authority given by the Members of the company, as his own 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 official seal as of _____, 2010.

Notary Public

SEAL

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

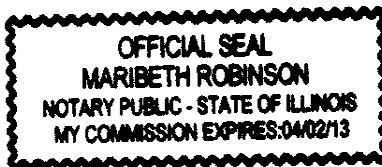
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Stephen J. Livadi, personally known to me to be the manger of **1471 N. WICKER PARK BLVD., LLC**, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument pursuant to authority given by the Members of the company, as his own 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 official seal as of April 12, 2010.

Maribeth Robinson

Notary Public

SEAL



UNOFFICIAL COPY

EXHIBIT A

Legal Description of Parcel A

LOT 32 IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOT 4 IN ASSESSOR'S DIVISION PART OF NORTH ½ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

Address: 1513 North Milwaukee Avenue, Chicago, Illinois

PIN(s): 17-06-200-019

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Legal Description of Parcel B

LOT 33 IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION OF LOT 4 IN ASSESSOR'S DIVISION PART OF NORTH ½ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

Address: 1515 North Milwaukee Avenue, Chicago, Illinois

PIN(s): 17-06-200-018

Property of Cook County Clerk's Office