

UNOFFICIAL COPY



Doc#: 1106210019 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/03/2011 11:23 AM Pg: 1 of 14

This instrument prepared by and to
be mailed to:

Mark R. Rosenbaum
Fischel & Kahn, Ltd.
190 S. LaSalle St., Ste 2850
Chicago, Illinois 60603

Above Space for Recorder's Use Only

WALL ENCROACHMENT AGREEMENT
DATED DECEMBER 31, 2010

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Wall Encroachment Lease

THIS WALL ENCROACHMENT LEASE (the "Agreement") is made and entered into this 31st day of December, 2010, by and between 222 East Chestnut Condominium Association, an Illinois not-for-profit corporation ("222"), Chicago Title Land Trust Company, as Trustee under trust no. 43663 ("Owner") and Chicago Title Land Trust Company, as Trustee under trust no. 112671-01 ("Tenant").

RECITALS:

- A. 222 is the condominium association which has the obligation to administer and operate that certain parcel of land commonly known as 222 E. Chestnut, Chicago, IL 60611 and legally described in Exhibit A attached hereto and by this reference made a part hereof (the "222 Property"); and
- B. Owner is the owner of that certain parcel of land commonly known as 860 N. DeWitt, Chicago, IL 60611, legally described in Exhibit B attached hereto and by this reference made a part hereof (the "DeWitt Property"); and
- C. Tenant is the now-existing tenant under the certain Indenture of Lease, dated March 1, 1960, between 199 Lake Shore Drive, Inc., as Lessor, (to whose interest Owner has succeeded) and American National Bank and Trust Company of Chicago, as Trustee under Trust no. 15196, as Lessee (to whose interest Tenant has succeeded), which Indenture of Lease commenced March 1, 1960 for a stated term of 99 years, 10 months, on the DeWitt Property; and
- D. The DeWitt Property is immediately East of, and adjacent to, the 222 Property; and
- E. A 19 story condominium building currently exists on the 222 Property; and
- F. A one-story garage structure currently exists on the Western portion of the DeWitt Property; and
- G. The 222 Property building and the 860 DeWitt Property garage abut each other for about 50.5 feet (North to South) along the property line between the two Properties, as shown on the circled area of the plat page attached to this Agreement as Exhibit "C"; and
- H. 222 desires to insulate and waterproof that portion of the East wall of the 222 Property building, which so abuts the property line between the Properties (the "East Wall"), by adding a

UNOFFICIAL COPY

siding to the entire East Wall (to the extent such wall is visible above the DeWitt garage), which siding will result in the East Wall extending over the property line between the Properties, and into the airspace over the DeWitt Property garage, by approximately 4 inches; and

I. OWNER and TENANT are willing to allow such work and to lease to 222 the airspace of the DeWitt Property necessary for the installation and existence of the siding.

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

1. *Recitals Incorporated by Reference.* The provisions of the aforestated Recitals are, by this reference, herein incorporated as if they had been set forth in the text of this Agreement.

2. *Grant of Lease by OWNER and TENANT.* Owner and Tenant hereby grant to 222 a leasehold interest permitting 222 to improve and maintain, at 222's sole expense, the East Wall by 4 inches over the West property line of the 860 DeWitt Property at a level starting immediately above the top of the existing 860 DeWitt Property garage building as more particularly shown on the drawing attached hereto as Exhibit "D," and continuing to the top of 222 building, as now existing, for the sole purpose of installing and maintaining certain siding to the 222 Property, provided that Owner and Tenant shall have the right to:

a. approve the exterior finish of the siding to be installed, which approval shall not be unreasonably withheld or delayed; and

b. review and approve 222's plans and drawings for installation of the siding, including the plans and drawings of 222's engineer and contractor, which approval shall not be unreasonably withheld or delayed.

The improvements that 222 shall place within the leasehold area shall be designed to prevent any drainage problems for the roof over the 860 DeWitt Property garage. Approval by Owner and Tenant of the engineering plans and drawings of 222 shall not be relied upon by 222 as confirmation that such plans and drawings comply with applicable law or represent good engineering practices.

3. *Term of Lease and Rental Payments.*

a. This Agreement shall commence as of the date and year first written above and shall expire at 11:59 p.m on December 31, 2059. Notwithstanding the term of this Agreement as so set forth above, the Owner shall have the right, upon 180 days written notice to 222, to terminate this Agreement in the event Owner shall decide, in good faith, that (i) within the then succeeding 12 month period, it anticipates a need for the airspace which the siding occupies and/or (ii) that the installation and existence of the siding adversely affects the value of the 860 DeWitt Property.

b. Upon full execution of this Agreement by all parties, 222 shall pay to Owner a

UNOFFICIAL COPY

one-time rental payment of \$13,000.00.

4. *Installation and Maintenance.* a. The parties recognize that in order for 222 to install, maintain and remove (at the end of the term of this Agreement) the siding on 222's East Wall it will be necessary for 222 to have access to and utilize a portion of the exterior of the 860 DeWitt Property, and especially the roof of the 860 DeWitt garage, for the staging of machinery, material, equipment and personnel to perform such work, all at 222's expense. Owner and Tenant hereby agree to and will permit such access during regular construction business hours (but no earlier than 8:00 a.m. and no later than 6:00 p.m. Monday through Friday), provided that 222 shall give reasonable notice to Owner and Tenant of the areas of the 860 DeWitt Property that may be needed for the work and the expected duration of the work. 222 agrees to keep such area of the 860 DeWitt Property to the minimum reasonably needed for such access and utilization. At all times during the work, 222 shall provide to Owner and Tenant insurance in such amounts and coverages, including the naming of Owner and Tenant as an additional insured, as OWNER and TENANT shall reasonably require.

b. Upon completion of the installation of the siding, 222 shall notify Owner and Tenant. Thereafter, since it is expected by all parties that the East Wall and the siding to be installed upon it shall, from time to time require, in the sole discretion of 222, to be maintained, repaired and/or replaced, Owner and Tenant agree to permit 222, upon reasonable notice, to have access to the exterior of the 860 DeWitt Property, including the roof of the 860 DeWitt garage building for the staging of machinery, material, equipment and personnel to perform inspections of the East Wall and for such maintenance, repair and/or replacement work, all at 222's expense. Owner and Tenant hereby agree to and permit such access during regular construction business hours (as described above), provided that 222 shall give reasonable notice to Owner and Tenant of the areas of the 860 DeWitt Property that may be needed for the work and the expected duration of the work. 222 agrees to keep such area of the 860 DeWitt Property to the minimum reasonably needed for such access and utilization. At all times during such work, 222 shall provide to Owner and Tenant insurance in such amounts and coverages, including the naming of Owner and Tenant as an additional insured, as Owner and Tenant shall reasonably require.

c. All costs of installation, maintenance, repair, replacement and removal of the siding shall be at the sole expense of 222.

5. *Reservation of Rights.* The parties acknowledge that, given the duration of this Agreement, it is possible that one or more structures now on either the 222 Property or the 860 DeWitt Property may change in height or location or otherwise. In the event that either Owner or Tenant give notice to 222 that Owner or Tenant intend to build or increase the height of any structure on the 860 DeWitt Property such that the new (or changed) structure will cover the face of the East Wall such that the siding now permitted by this Agreement will interfere with the new or changed structure(s) to be built in the 860 DeWitt Property, 222 will promptly take action, at its expense to remove all or such portion of the 222 East Wall siding that encroaches on

UNOFFICIAL COPY

the 860 DeWitt Property, as otherwise permitted by this Agreement, as is necessary to permit Owner or Tenant to build the new or changed structure.

6. *Enforcement.* The parties agree that in the event of a breach or violation hereof, damages can in no way compensate therefor; that injunctive relief is essential for the protection of each party hereto; that such injunctive relief, in addition to any other remedy afforded by law or equity, may be obtained without bond; and that no waiver of any breach of or a violation of this Agreement shall be implied from forbearance or failure by any party to take action hereunder. In the event of litigation with regard to this Agreement, the prevailing party or parties, as determined by the court, shall be entitled to said party(ies)'s attorneys' and paralegals' fees and all costs.

7. *Rights and Obligations.* All provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successor and assigns. Provided however, that if and to the extent that all such siding is at any time removed prior to the end of the term of this Agreement, this Agreement will then terminate and will be of no further force or effect. Upon termination of this Agreement for any reason, 222 agrees to execute and deliver a Confirmation of Lease Termination in recordable form.

8. *Mechanics Liens.* In the event any lien upon Owner or Tenant's title results from any act or neglect of 222, and 222 fails to take action to remove such lien within 30 days after Owner or Tenant's notice to do so, Owner or Tenant may remove the lien by paying the full amount thereof or otherwise and without investigation or contest of the validity thereof, and 222 shall pay to Owner or Tenant upon demand, together with interest at the rate of 10% per annum, the amount so paid out by Owner or Tenant in such behalf, including Owner or Tenant's costs, expenses and reasonable attorneys' fees; provided however that Owner or Tenant shall not so pay off such lien so long as 222 is taking reasonable actions to contest such lien and has posted a bond or other security reasonably acceptable to Owner and Tenant with respect to such lien.

9. *Indemnification.* To the maximum extent permitted by law, and except to the extent arising from the gross negligence or willful misconduct of Owner or Tenant, 222 agrees to indemnify, defend, and hold harmless Owner, Tenant, their tenants, guests, invitees, officers, directors, beneficiaries, members and managers (collectively, the "Landlord Indemnified Parties") from and against any and all claims, liabilities, actions, damages, costs, and expenses (including, without limitation, court costs and reasonable attorneys' fees) asserted against or incurred by any of the Landlord Indemnified Parties and arising from, or by reason of, the use or occupancy by 222 of the premises leased hereby or by reason of any improvements installed by or on behalf of 222 within such premises, or the design, fabrication, installation, maintenance, operation, repair, or removal of any such improvements.

UNOFFICIAL COPY

10. *Owner/Tenant Right to Perform.* In the event that 222 shall fail to perform any covenant or obligation hereunder within 30 days of the date required, including, without limitation, the removal of the encroachment otherwise permitted hereunder when removal is required, Owner or Tenant shall have the right to perform such action on behalf of 222, and 222 shall then be responsible to reimburse Owner or Tenant, as applicable, on demand, for the full cost incurred by Owner or Tenant in performing such obligation of 222 (including, without limitation any reasonable attorneys' fees incurred to enforce such provision), together with interest at the rate of 10% per annum until paid. Owner and Tenant shall have access to the property of 222 to perform such removal if 222 fails to timely remove such encroachment.

11. *Escrow for Removal.* In order to assure a fund is available to pay for the removal of the cladding and other installations by 222 in the premises demised hereunder, 222 shall establish an escrow account with Chicago Title and Trust Company on or before February 1, 2011, into which it will make monthly deposits as described below. On or before February 1, 2011, 222 shall deliver to Owner an estimate of the cost to remove the cladding and other installation prepared by an engineering firm selected by 222 and reasonably approved by Owner. Commencing on February 1, 2011, 222 shall make monthly deposits into such escrow equal to 1/120 of the estimated removal cost. 222 shall obtain an updated estimated cost of removal from an engineering firm selected by 222 and reasonably approved by Owner every 10 years and the escrow balance shall be increased (but not decreased) to conform to each subsequent cost estimate (with 222 having 24 months to make equal monthly installments to increase the escrow balance to the then most recent cost estimate of removal). The escrowee shall send annual statements to Owner, Tenant and 222 identifying the balance then remaining in such escrow. 222 shall be responsible for the cost of maintaining such escrow. The funds in such escrow may be withdrawn only with the written approval of both Owner and Tenant and shall be used solely for the cost of removing such improvements. In the event that 222 does not timely remove such improvements when required hereunder, Owner and Tenant shall have the right to withdraw such funds in the escrow to cover the cost of such removal if undertaken by Owner or Tenant pursuant to Paragraph 10 hereof. Funds in such escrow may be invested for the benefit of 222 in federally insured savings accounts, certificates of deposits or money market accounts. In lieu of establishing an escrow account, or, following establishment of the escrow if 222 desires to terminate such escrow, 222 may deliver a letter of credit from a national bank acceptable to Owner in its reasonable discretion and in a form reasonably acceptable to Owner in the full amount of the estimated cost of removal. Such letter of credit, and each renewal thereof, shall be for a term of not less than 12 months and shall be renewed not less than 90 days prior to its expiration date. In the event 222 fails to timely renew the letter of credit at least 90 days prior to its expiry date, Owner, shall be permitted to present such letter of credit for payment and shall then hold such funds as a deposit to ensure removal of the cladding. The letter of credit amount shall be adjusted every 10 years as would otherwise apply to the balance required to be maintained in the escrow account.

UNOFFICIAL COPY

12. *Notice.* All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered on the first day following delivery to an overnight courier service or on the third day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to 222: 222 East Chestnut Condominium Association
c/o The Building Group, Inc.
1045 W. Lawrence Avenue
Chicago, IL 60640

With a copy to: MarkR. Rosenbaum
Fischel & Kahn, Ltd.
190 S. LaSalle Street
Suite 2850
Chicago, Illinois 60603

If to OWNER: c/o David Cohen
3500 N. Lake Shore Drive
Apt. 3B
Chicago, Illinois 60667

With a copy to: James N. Perlman
4334 N. Hazel St.
#406
Chicago, Illinois 60613-1445

If to TENANT: c/o Supera Asset Management
2001 N. Halsted
Suite 301
Chicago, Illinois 60614

Addressees and addresses may be changed by the parties by notice given in accordance with the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day

UNOFFICIAL COPY

and year first above written.

222 East Chestnut Condominium Association,
An IL not-for-profit corporation

By: 

Attest: Susan H. Woodward

OWNER:

Chicago Title Land Trust Company, as trustee under
trust no. 43663

By: Christine C. Young Trust Officer
and not personally

Attest: Attestation not required
pursuant to corporate by-laws.

TENANT:

Chicago Title Land Trust Company, as trustee under
Trust no. 112671-01

By: 

Attest: Attestation not required
pursuant to corporate by-laws.

W:\Macks.860 DeWitt Lease Ver8.120710

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

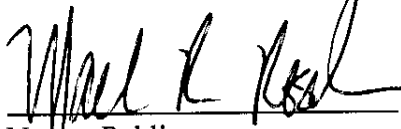
It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

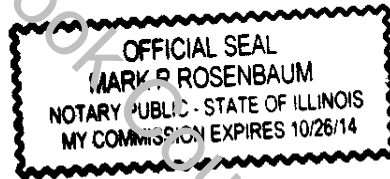
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

The undersigned, an Illinois notary public, does hereby certify that JAY LEVINE, personally known to me to be the President of 222 East Chestnut Condominium Association, an Illinois not-for-profit corporation, and SUSAN K. WOODWARD, 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, appeared before me in the County stated above this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said not-for-profit corporation, and as their free and voluntary act, and as the free and voluntary act of said not-for-profit corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal this 8th day of December, 2010.


 Notary Public



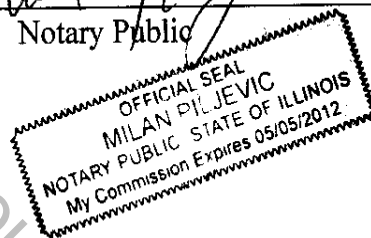
UNOFFICIAL COPY

[illegible]

I, the undersigned, a Notary Public in and for the State aforesaid, DO HEREBY CERTIFY, that the above-named ~~Christine C. Young~~ Trust Officer, and Trust Officer of Chicago Title Land Trust Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and Trust Officer, and Trust Officer, respectively, appeared before me this day in person in the County aforesaid 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 Chicago Title Land Trust Company, as trustee of trust 43663, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14 day of Dec., 2010.

Notary Public



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the State aforesaid, DO HEREBY CERTIFY, that the above-named ~~JOSEPH F. SOCHACKI~~ and Trust Officer, and Trust Officer of Chicago Title Land Trust Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such and Trust Officer, and Trust Officer, respectively, appeared before me this day in person in the County aforesaid 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 Chicago Title Land Trust Company, as trustee of trust 112671-01, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22 day of February, 2010.

 Notary Public



UNOFFICIAL COPY

Exhibit "A"

Legal Description

All Units in 222 East Chestnut Condominium, as delineated on the survey of the following described property:

Lot 33 and the West 15 feet 6 inches of Lot 34 in Lake Shore Drive Addition to Chicago, a subdivision of part of Blocks 14 and 20 in Canal Trustees Subdivision of the South Fractional 1/4 of Section 3, Township 39 North, Range 14, East of the Third Principal Meridian,

which survey is attached as Exhibit "A" to the Declaration of Condominium recorded in the Office of the Recorder of Deeds of Cook County, IL as document no. 24933769, as amended from time to time, together with each Unit's undivided percentage interest in the Common Elements, in Cook County, IL.

Unit No.	PIN	Unit No.	PIN
1C	17-03-221-011-1001	9C	17-03-221-011-1024
2B	17-03-221-011-1002	9D	17-03-221-011-1025
2C	17-03-221-011-1003	10B	17-03-221-011-1026
2D	17-03-221-011-1004	10C	17-03-221-011-1027
3B	17-03-221-011-1005	10D	17-03-221-011-1028
3C	17-03-221-011-1006	11A	17-03-221-011-1029
3D	17-03-221-011-1007	11B	17-03-221-011-1030
4B	17-03-221-011-1008	12A	17-03-221-011-1031
4C	17-03-221-011-1009	12B	17-03-221-011-1032
4D	17-03-221-011-1010	13A	17-03-221-011-1033
5B	17-03-221-011-1011	13B	17-03-221-011-1034
5C	17-03-221-011-1012	14A	17-03-221-011-1035
5D	17-03-221-011-1013	14B	17-03-221-011-1036
6B	17-03-221-011-1014	15A	17-03-221-011-1037
6C	17-03-221-011-1015	15B	17-03-221-011-1038
6D	17-03-221-011-1016	16A	17-03-221-011-1039
7B	17-03-221-011-1017	16B	17-03-221-011-1040
7C	17-03-221-011-1018	17A	17-03-221-011-1041
7D	17-03-221-011-1019	17B	17-03-221-011-1042
8B	17-03-221-011-1020	18A	17-03-221-011-1043
8C	17-03-221-011-1021	18B	17-03-221-011-1044
8D	17-03-221-011-1022	19A	17-03-221-011-1045
9B	17-03-221-011-1023	19B	17-03-221-011-1046

All located at 222 E. Chestnut St.

Chicago, IL 60611

W:\mrosenbaum\mrr WordPerfect Files\mrr client files\222 E Chestnut CA\860 DeWitt Agreement\222 Legal Description.doc

UNOFFICIAL COPY

Exhibit "B"

Lot 34 (except the West 15 feet 6 inches thereof) and all of Lots 35 and 36 in Lake Shore Drive Addition to Chicago, a subdivision of part of Blocks 14 and 20 in Canal Trustees Subdivision of the South Fractional 1/4 of Section 3, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, IL.

PIN: 17-03-221-010-0000

Address: 860 N. DeWitt
Chicago, IL 60611

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT

"C" + "D"

