

3/4/2005

8-0-05

AN ORDINANCE

**Authorizing the City Manager to Execute an
Easement Agreement with Sherman Plaza Partners, LLC,
for a Temporary Tower Crane on Right-of-Way on Davis Street
adjacent to Sherman Plaza**

WHEREAS, Sherman Plaza Partners, LLC, ("Sherman Plaza") owns the property legally described in Exhibit A, attached hereto; and

WHEREAS, Sherman Plaza intends to build a mixed-use residential/commercial building with parking located in an adjacent parking structure; and

WHEREAS, the City of Evanston (the "City") and Sherman Plaza desire to enter into an Easement Agreement for a temporary construction easement for a temporary tower crane; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into said Agreement,

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, an Easement Agreement, attached hereto as Exhibit A and made a part hereof, between the City of Evanston and

Sherman Plaza providing for a temporary tower crane on the right-of-way adjacent to Davis Street at Sherman Plaza for the duration of the Sherman Plaza construction. **SECTION 2:** That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the Agreement as may be determined to be in the best interests of the City.

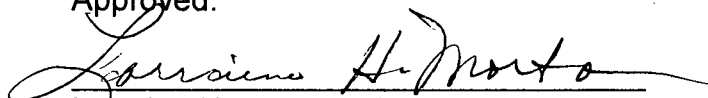
SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: March 14, 2005

Adopted: March 14, 2005

Approved:



Lorraine H. Morton, Mayor

March 15, 2005

Attest:


Mary P. Morris, City Clerk

Approved as to form:


Corporation Counsel

THIS DOCUMENT WAS
PREPARED BY AND UPON
RECORDING TO BE
RETURNED TO::

SCHIFF HARDIN LLP
6600 Sears Tower
233 S. Wacker Drive
Chicago, Illinois 60606
Attn: Steven D. Friedland, Esq.

This space is for **RECORDER'S USE ONLY**

Temporary Construction Easement

This Easement Agreement (the "Agreement") is made and entered into this _____ day of _____, 2005, by and between the City of Evanston, Cook County, Illinois an Illinois municipal corporation (hereinafter, "Grantor") and Sherman Plaza Partners, LLC, a Delaware limited liability company (hereinafter "Grantee"):

WHEREAS, Grantee owns the property legally described on Exhibit A, attached hereto; and

WHEREAS, Grantee intends to build a mixed-use residential/commercial building (the "Building") with parking located in an adjacent parking structure (the "Parking Structure"); and

WHEREAS, Grantee is the development manager of Grantor with respect to the construction of the Parking Structure in accordance with that certain Public Improvements Construction Agreement dated as of October 22, 2001, as amended from time to time (the "PICA");

WHEREAS, in order to construct the Building and the Parking Structure it is necessary to locate a tower crane and footings in the Davis Street right-of-way all as shown on Exhibit B attached hereto (the "Tower Crane Easement Area"); and

WHEREAS, Grantor and Grantee are desirous of entering into an easement agreement providing for the afore-described encroachment of the footing and tower crane on the public right-of-way.

NOW, THEREFORE, in consideration of the foregoing recitals, the various covenants herein, and the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. Grantor hereby grants and conveys to Grantee, its successors, grantees, agents, and assigns, a temporary easement in, to, over, under, upon and through the Tower Crane Easement Area to install, maintain, operate, replace and remove the aforescribed Tower crane and footings (such easement to include an easement over the Davis Street right-of-way for the encroachment of the tower crane boom).
2. This easement shall terminate upon the removal of the Tower Crane upon completion of construction of the Building and the Parking Structure.
3. The Grantor expressly retains its interest in and rights to the use and occupation of the easement premises subject to the easement rights herein granted.
4. Grantee may carry out such surface, above-surface, and subsurface work as may be necessary to effectuate the purpose of this easement.
5. Grantee will obtain all required permits with respect to the Building at its own expense.
6. Grantee may occupy the public right-of-way to effectuate the purpose of this easement, provided that Grantee will schedule all work related to the construction within the right-of-way in such a manner at such times as to cause minimum disruption to the flow of traffic. Grantee shall not obstruct the public right-of-way without first having notified the City's Engineering Division as to the date and time during which said obstruction will exist and without first having obtained the City Engineer's consent to said closing, which consent shall not be unreasonably withheld.
7. Grantee will promptly, after caisson placement is completed, restore the surface to its pre-placement condition, including any repaving which may be associated therewith. All such restoration is to be done at Grantee's sole expense (subject to the obligation of Grantor to pay such costs as required in accordance with the PICA) and in compliance with all applicable legislation.
8. Grantee, its successors, grantees, agents and assigns, by acceptance of this Agreement, shall indemnify and save harmless the Grantor against any and all loss, damage, claims, injuries, deaths and cost or expenses caused by, arising out of, or alleged to arise out of this Agreement solely with respect to those easements that benefit the Building, including but not limited to attorney's fees.

9. The making, execution, and delivery of this Easement by Grantor have been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, their officers, agents, representatives, and employees, relating to the subject matter hereof. This Easement may be amended or modified only by an instrument of equal formality, signed by the duly authorized officers of the respective parties.
10. Grantee shall record this easement at its own expense within 60 days of passage of Ordinance 8-O-05 by the City Council. Grantee shall, promptly after recordation, provide a copy of same to Grantor's City Engineer.
11. Any notices required or given hereunder shall be in writing and shall be delivered via return receipt mail, addressed to the parties as follows, unless otherwise indicated in the future.

If to Grantor: City Engineer/Senior Engineer
Evanston Civic Center
2100 Ridge Avenue
Evanston, IL 60201

with a copy to: Law Department
Evanston Civic Center
2100 Ridge Avenue
Evanston, IL 60201

If to Grantee: Focus Development
211 Waukegan Road, Suite 220
Northfield, Illinois 60093

with a copy to: Schiff Hardin LLP
c/o David A. Grossberg
6600 Sears Tower
Chicago, IL 60606

Notice shall be deemed effective upon receipt.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement at Evanston, Illinois, on the date first above written.

[SIGNATURE PAGE ON FOLLOWING PAGE]

Accepted by:

SHERMAN PLAZA PARTNERS, LLC

CITY OF EVANSTON, COOK
COUNTY, ILLINOIS

By: _____

Timothy Anderson

Title: Authorized Representative

By: _____

Title: City Manager

EXHIBIT A

PARCEL 1:

LOTS 2, 3 AND 4 IN SHERMAN PLAZA SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PLAT WAS RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404084.

PARCEL 2:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 4 AND, FOR THE BENEFIT OF LOT 3, AS DESCRIBED AND DEFINED IN SECTION 9, OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 3:

LEASEHOLD ESTATE AS CREATED BY THE LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA VENTURE, L.L.C. RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404088, AS ASSIGNED TO SHERMAN PLAZA PARTNERS, LLC BY ASSIGNMENT AND ASSUMPTION OF AGREEMENTS RECORDED _____ DECEMBER 9, 2004 AS DOCUMENT NO. 0434304089, WHICH DEMISES AND LEASES THE FOLLOWING DESCRIBED PORTION OF LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID, FOR A TERM COMMENCING AND EXPIRING AS THEREIN DEFINED:

THAT PART OF LOT 1, AFORESAID, LYING ABOVE GROUND TIER FINISHED FLOOR ELEVATION OF 600.8, MORE OR LESS, AND BELOW SECOND TIER RAMP AND PARKING AREA FINISHED FLOOR ELEVATIONS RANGING FROM 609.83 THROUGH 623.58, MORE OR LESS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 21 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 44.55 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST 2.69 FEET FOR THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 14.45 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.67 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 3.17 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.67 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 44 SECONDS WEST, 0.31 FEET;

THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.08 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 37.70 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 23 SECONDS EAST, 26.40 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.33 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.60 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 6.47 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.36 FEET;
THENCE SOUTH 89 DEGREES 36 MINUTES 33 SECONDS WEST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 18.92 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.50 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 0.25 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 19.58 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.04 FEET;
THENCE SOUTH 27 DEGREES 41 MINUTES 23 SECONDS WEST, 19.40 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 10.43 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.29 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 4.00 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 0.67 FEET;
THENCE SOUTH 89 DEGREES 20 MINUTES 58 SECONDS WEST, -0.29 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 14.58 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, -0.29 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 3.17 FEET;
THENCE SOUTH 00 DEGREES 19 MINUTES 33 SECONDS EAST, 1.04 FEET;
THENCE SOUTH 89 DEGREES 33 MINUTES 59 SECONDS WEST, 0.04 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 0.21 FEET;
THENCE NORTH 06 DEGREES 39 MINUTES 58 SECONDS WEST, 0.38 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 12.62 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 0.67 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, -1.67 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 36.50 FEET;
THENCE NORTH 89 DEGREES 40 MINUTES 27 SECONDS EAST, 1.67 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.67 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 1.67 FEET;
THENCE NORTH 00 DEGREES 19 MINUTES 33 SECONDS WEST, 2.04 FEET;
THENCE NORTH 86 DEGREES 50 MINUTES 50 SECONDS WEST, 0.17 FEET;
THENCE SOUTH 89 DEGREES 40 MINUTES 27 SECONDS WEST, 20.75 FEET TO
THE PLACE OF BEGINNING.

PARCEL 4:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 3 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 3 OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434303085.

PARCEL 5:

LEASEHOLD ESTATE AS CREATED BY THE RETAIL PARKING LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA PARTNERS, LLC, RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404092 WHICH DEMISES AND LEASES THE FOLLOWING FOR A TERM COMMENCING ON THE COMMENCEMENT DATE AS DEFINED THEREIN AND TERMINATING UPON THE 40TH ANNIVERSARY THEREOF:

"...SUFFICIENT UNASSIGNED AND UNRESERVED AUTOMOBILE PARKING SPACES TO COMPLY WITH THE CITY OF EVANSTON'S ZONING ORDINANCE, AS THAT ORDINANCE MAY BE MODIFIED FROM TIME TO TIME, LOCATED AT THE PLANNED NEW PUBLIC PARKING GARAGE LOCATED..." ON LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID.