

2/18/2005

24-O-05

AN ORDINANCE

**Authorizing the City Manager to Execute an
Easement Agreement with TR Sienna Partners, LLC,
for a Subsurface Easement for Foundation and Earth Retention
adjacent to 1100 Clark Street and 1719 Ridge Avenue**

WHEREAS, TR Sienna Partners, LLC, has acquired the property commonly known as 1100 Clark Street and 1719 Ridge Avenue, Evanston, Illinois, and legally described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the City of Evanston owns a public alley (the "Public Alley") that runs parallel along the entire length of the south property line of the property as described in the plat of easement prepared by Gremley & Biedermann, Inc., attached hereto as Exhibit B and made a part hereof; and

WHEREAS, TR Sienna Partners, LLC, intends to build four (4) eight- (8-) story buildings on the property, containing approximately two hundred thirty-seven (237) condominium units with underground and above ground structured parking for approximately six hundred seventy-seven (677) parking spaces; and

WHEREAS, the bells of certain of the caissons required to support the buildings and parking structure located on the south side of the property will be installed in such manner that they will constitute a subsurface encroachment into the Public Alley; and

WHEREAS, earth retention necessary to facilitate the construction of the building will be installed below the surface of the Public Alley; and

WHEREAS, the areas where the foundation and earth retention will occur in the Public Alley are indicated on Exhibit C attached hereto; and

WHEREAS, the foundation and earth retention are proposed to be located so as to encroach on the City's Public Alley to a maximum of one foot (1') south of the south property line of the property; and

WHEREAS, the City and TR Sienna Partners, LLC, are desirous of entering into an easement agreement providing for the afore-described encroachment of the caisson bells and earth retention as a subsurface encroachment into the Public Alley; 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, for the term of ninety-nine (99) years and the sum of three thousand ninety and no/100 dollars (\$3,090.00) attached hereto as Exhibit A and made a part hereof, between the City of Evanston and TR Sienna Partners, LLC, providing for the encroachment

of a foundation and earth retention on the public right-of-way adjacent to 1100 Clark Street and 1719 Ridge Avenue.

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: February 28, 2005

Adopted: March 14, 2005

Approved:

March 15, 2005

Lorraine H. Morton
Lorraine H. Morton, Mayor

Attest:

Mary P. Morris
Mary P. Morris, City Clerk

[Signature]
Approved as to form
Corporation Counsel

Exhibit 1 to Ordinance 24-O-05

SUB SURFACE EASEMENT
Foundation and Earth Retention Easement on Public Way
Ninety-Nine Year Easement Agreement

This Easement Agreement (this “easement” or this “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 TR Sienna Partners, LLC, an Illinois limited liability company (hereinafter “Grantee”):

WHEREAS, Grantee has acquired the property commonly known as 1100 Clark Street and 1719 Ridge Avenue, Evanston, Illinois, and legally described in Exhibit B attached hereto and made a part hereof (the “Land”); and

WHEREAS, Grantor owns a public alley (the “Public Alley”) that runs parallel along the entire length of the south property line of the Land as described in the plat of easement dated _____, 2004, prepared by Gremley & Biedermann, Inc., attached hereto as Exhibit A and made a part hereof (the “Plat”); and

WHEREAS, Grantee intends to build four 8-story buildings on the Land, containing approximately 237 condominium units with underground and above ground structured parking for approximately 677 parking spaces; and

WHEREAS, the bells of certain of the caissons required to support the buildings and parking structure located on the south side of the Land will be installed in such manner that they will constitute a sub-surface encroachment into the public alley; and

WHEREAS, earth retention necessary to facilitate the construction of the building will be installed below the surface of the public alley; and

WHEREAS, the areas where the foundation and earth retention will occur in the public alley are indicated on Exhibit A hereto; and

WHEREAS, the foundation and earth retention are proposed to be located so as to encroach on Grantor’s Public Alley to a maximum of one (1.0) foot south of the south property line of the Land; and

WHEREAS, Grantor and Grantee are desirous of entering into an easement agreement providing for the afore-described encroachment of the caisson bells and earth retention as a sub-surface encroachment into the Public Alley;

NOW, THEREFORE, in consideration of the foregoing recitals, the various covenants herein, and the sum of \$ 3090 including administrative fees and other good and

valuable consideration, receipt of which are hereby acknowledged, it is agreed by and between the parties as follows:

Grantor hereby grants and conveys to grantee, its successors, grantees, agents, and assigns, an easement on, beneath and under the northernmost one (1.0) foot of Grantor's Public Alley and real estate in question (the "Easement Premises"), to install, maintain, repair, replace and use the foundation and earth retention as particularly described and located on the Plat.

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.

The grant of easement gives Grantee no surface or above-surface rights. Grantee may carry out such surface, above-surface, and subsurface work in the Public Alley as may be necessary to effectuate the purpose of this easement.

Grantee will obtain all required permits at its own expense.

Grantee may occupy the Public Alley to effectuate the purpose of this easement, provided that Grantee will schedule all work related to the foundations and earth retention in such a manner at such times as to cause minimum disruption to the flow of traffic. Grantee shall not obstruct the Public Alley 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.

Grantee will promptly, after footings and earth retention placement are completed, restore the surface in accordance with the standard set forth by the Grantor, including any repaving which may be associated therewith. All such restoration is to be done at Grantee's sole expense and in compliance with all applicable legislation.

This easement is for a term of ninety-nine (99) years, unless terminated, renewed, or modified by the parties. At the termination of this easement, Grantee shall, at the City's option, be required to remove the encroachments at its own expense and restore the easement property and surface.

This easement shall not be assigned to any entity other than the Sienna Court Condominium Association without the express written consent of the Grantor authorized by its City Council.

Grantee, its successors, grantees, agents and assigns, by acceptance of this Easement, 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 easement, including but not limited to attorney's fees.

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.

Grantee shall record this easement at its own expense within 90 days of passage of Ordinance 24-O-05 by the City Council. Grantee shall, promptly after recordation, provide a copy of same Grantor's Deputy Director of Public Works/ Senior Engineer.

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. Notice shall be deemed effective upon receipt.

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

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

If to Grantee: Sienna Court Condominium Association
 c/o TR Management, Inc.
 1415 Sherman Avenue, Suite 101
 Evanston, IL 60201

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

Accepted by:
TR SIENNA PARTNERS, LLC
an Illinois limited liability company

CITY OF EVANSTON,
COOK COUNTY, ILLINOIS

By: TR Sienna, Inc., an Illinois
 corporation, its manager

By: _____
Typed Name: Thomas A. Roszak
Title: President

By: _____
Typed Name: Julia Carroll
Title: City Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, who is personally known to me to be the City Manager of the City of Evanston, Illinois, a municipal corporation, and 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 the said instrument as such City Manager and as his free and voluntary act and as the act and deed of such general partner, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 2005.

Notary Public
(Type or Print Name)

My Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY THAT THOMAS A. ROSZAK, of TR SIENNA PARTNERS, LLC personally known to me to be the same persons whose name is subscribed to the foregoing instrument as the President of TR Sienna, Inc., an Illinois corporation, the manager of TR Sienna Partners, LLC, appeared before me this day in person 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 said limited liability company for the uses and purposes therein set forth;

GIVEN under my hand and Notarial Seal this ____ day of _____, 2005.

Notary Public
(Type or Print Name)

My Commission Expires: _____

CONSENT OF SENIOR MORTGAGEE

CORUS Bank, N.A., a national banking association, holder of a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated for reference purposes only August 18, 2004, recorded August __, 2004, as Document Number _____, as amended by First Amendment to Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement, dated for reference purposes only October 5, 2004, and recorded October __, 2004, as Document Number _____, covering the Land, hereby consents to the execution and recording of the within Easement Agreement and agrees that said Mortgage is subject and subordinate thereto.

IN WITNESS WHEREOF, the Senior Mortgagee has caused this instrument to be signed by its duly authorized officers on its behalf on this _____ day of _____, 2005.

CORUS Bank

By: _____

Its: _____

Attest:

By: _____

Its: _____

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY THAT _____, _____ of CORUS BANK, N.A. _____, _____ of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers respectively, appeared before me this day in person 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 said Bank, for the uses and purposes therein set forth; and the said _____ Secretary then and there acknowledged that as custodian of the corporate seal of said Bank (s)he affixed the seal as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____,

2005 _____

Notary Public

CONSENT OF JUNIOR MORTGAGEE

CAPITALSOURCE FINANCE, LLC., a Delaware limited liability company, holder of a Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents, dated as of August 18, 2004, recorded August __, 2004, as Document Number _____, covering the Land, hereby consents to the execution and recording of the within Easement Agreement and agrees that said Mortgage is subject and subordinate thereto.

IN WITNESS WHEREOF, the Junior Mortgagee has caused this instrument to be signed by its duly authorized officers on its behalf on this _____ day of _____, 2005.

Capital Source Finance; LLC,

a Delaware limited liability company

By: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY THAT _____, _____ of CORUS BANK, N.A. _____, _____ of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers respectively, appeared before me this day in person 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 said Bank, for the uses and purposes therein set forth; and the said _____ Secretary then and there acknowledged that as custodian of the corporate seal of said Bank (s)he affixed the seal as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2005.

Notary Public

GREMLEY & BIEDERMANN

License No. 91-10071
PROFESSIONAL LAND SURVEYORS
4145 NORTH ELSTON AVENUE, CHICAGO, IL 60630
TELEPHONE (773) 465-0821 FAX (773) 524-4344 EMAIL: INFO@G&B-SURVEY.COM

Plat of Easement

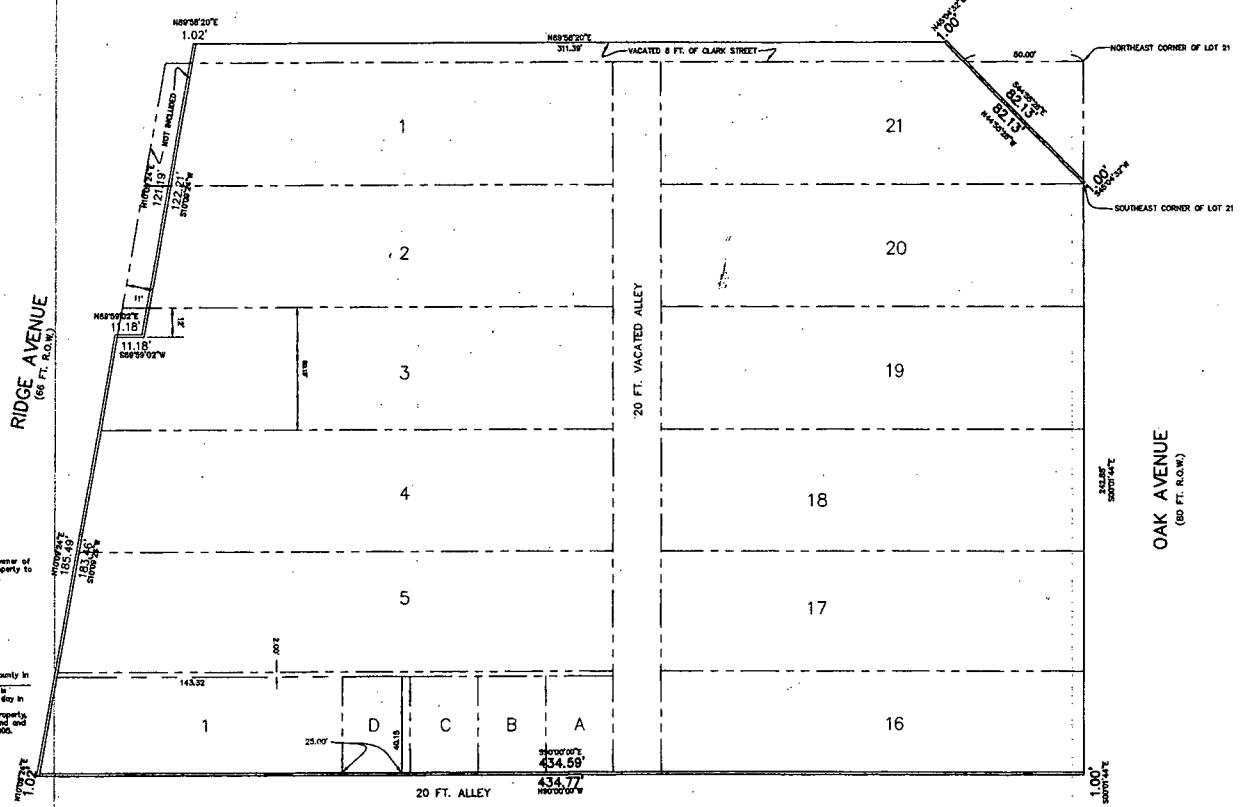
That part of the North 1.0 foot of the East 1/2 of the 20 foot public alley South of Clark Street 150 feet West of the property extension of the West line of Oak Avenue and East of the Southwesterly extension of the East line of Ridge Avenue all in the Southwest Quarter of the Northwest Quarter of Section 16, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Also
That part of Lot 21 in Block 2 in Profit's Addition to Extension of part of the Southwest Quarter of the Northwest Quarter of Section 16, Township 41 North, Range 14, East of the Third Principal Meridian, together with part of Oak Street together with part of Clark Street described as beginning at the Southeast corner of Lot 21 Thence North 47° 57' 20" West along a line which passes through a point on the North line of Lot 21 offsetted 50 feet West of the Northeast corner thereof for a distance of 82.13 feet Thence North 46° 04' 33" West 1.0 foot Thence South 44° 00' 22" East 82.13 feet Thence South 40° 04' 37" West 1.0 foot to the point of beginning, in Cook County, Illinois.

Notary Public
I, _____, do hereby certify that I am the owner of the property certified herein and that I have caused the said property to be surveyed and plotted as shown herein for easement purposes.
Witness my hand and seal of office this _____ day of _____, A.D. 2005.
Notary Public

EVERED 2/14/05 EASEMENT
CHICAGO RECORDERS OFFICE NO. 2005-02282 (ALL)
CHICAGO RECORDERS OFFICE NO. 2005-02282 (PART)
RECORDING FEE \$100.00
GEMLEY & BIEDERMANN
4145 NORTH ELSTON AVENUE, CHICAGO, IL 60630
TELEPHONE (773) 465-0821 FAX (773) 524-4344 EMAIL: INFO@G&B-SURVEY.COM

CLARK STREET
(80 FT. R.O.W.)



State of Illinois)
County of Cook)
I, _____, Notary Public in and for the County and State aforesaid, do hereby certify that _____ personally known to me to be the same person who appeared before me this day in person and acknowledged that he (she) is the same person who signed, sealed and delivered the said instrument for the uses and purposes therein set forth. Given under my hand and seal this _____ day of _____, A.D. 2005.
City Clerk, Evanston, Illinois

State of Illinois)
County of Cook)
I, _____, Notary Public in and for the County and State aforesaid, do hereby certify that _____ personally known to me to be the same person who appeared before me this day in person and acknowledged that he (she) is the same person who signed, sealed and delivered the said instrument for the uses and purposes therein set forth. Given under my hand and seal this _____ day of _____, A.D. 2005.

State of Illinois)
County of Cook)
I, _____, Notary Public in and for the County and State aforesaid, do hereby certify that _____ personally known to me to be the same person who appeared before me this day in person and acknowledged that he (she) is the same person who signed, sealed and delivered the said instrument for the uses and purposes therein set forth. Given under my hand and seal this _____ day of _____, A.D. 2005.
Signed on _____
A.T. R. [Signature]