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ORDINANCE NO. 4-2011

AN ORDINANCE OF THE VILLAGE OF EVERGREEN PARK APPROVING AN EASEMENT AGREEMENT FOR THE ALLEY LOCATED AT 3159 WEST 95TH STREET, EVERGREEN PARK, ILLINOIS

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, Cook County, Illinois, as follows:

Section 1

That the Easement Agreement between the Village of Evergreen Park, Evergreen Partners Fund I, LLC, Evergreen Partners Fund II, LLC and JPMorgan Chase Bank, N.A. for the alley located at 3159 West 95th Street, in substantially the form attached hereto, is hereby approved for and on behalf of the Village. The Mayor is hereby authorized to execute the same for and on behalf of the Village.

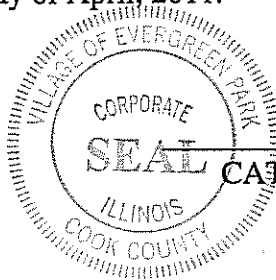
Section 2

All statutes of the State of Illinois or any parts thereof which are in conflict with the provisions of this ordinance are hereby superseded by this ordinance enacted under the home rule power of the Village of Evergreen Park.

Section 3

This ordinance shall be immediately in full force and effect after passage and approval.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Evergreen Park this 4th day of April, 2011.



Catherine T. Aparo

CATHERINE T. APARO, Village Clerk

APPROVED by me this 4th day of April, 2011.

James J. Sexton

JAMES J. SEXTON, Mayor

THIS DOCUMENT WAS
PREPARED BY AND AFTER
RECORDING SHOULD BE
RETURNED TO:

Vincent Cainkar
Louis F. Cainkar, Ltd.
6215 West 79th Street
Suite 2A
Burbank, IL 60459

This space reserved for Recorder's use only.

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this 4th day of April, 2011, by and among the Village of Evergreen Park (the "Village"), Evergreen Partners Fund I, LLC, an Illinois limited liability company, and Evergreen Partners Fund II, LLC, an Illinois limited liability company (collectively, "Evergreen") and JPMorgan Chase Bank, N.A., a national banking association ("Chase").

RECITALS:

A. Village is the owner of that certain real property (hereinafter referred to as the "Village Parcel") located in the Village of Evergreen Park, County of Cook, State of Illinois, more particularly described on Schedule I attached hereto.

B. Chase is the owner of that certain real property (hereinafter referred to as the "Chase Parcel") located adjacent to the Village Parcel in the Village of Evergreen Park, County of Cook, State of Illinois, more particularly described on Schedule II attached hereto.

C. Evergreen is the owner of that certain real property (hereinafter referred to as the "Evergreen Parcel") located adjacent to the Village Parcel in the Village of Evergreen Park, County of Cook, State of Illinois, more particularly described on Schedule III attached hereto.

D. As used herein, the term "Owner" shall mean the record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns, and the term "Parcel" shall mean the Village Parcel, the Chase Parcel or the Evergreen Parcel.

E. As used herein, the term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

F. The parties, for the mutual benefit of their respective Parcels, desire to establish certain easements and related rights with respect to the Parcels.

AGREEMENT:

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

1. **Recitals:** The Recitals are incorporated herein as an integral part hereof and are not merely recitals.

2. **Ingress and Egress Easement:** Village grants for the benefit of all present and future Owner's and Permittees of the Parcels a non-exclusive easement for pedestrian and vehicular traffic access to and from the Parcels, over and across the Village Parcel, to and from adjacent streets and right of ways. The Village Parcel shall be subject to any public or private utility easements as Village may deem necessary for the purpose of providing the utility lines and facilities for the Village Parcel and any adjacent properties; provided however, in no event shall such utility easements unreasonably interfere with, obstruct or delay the conduct and operations of the business of the Owner of the Chase Parcel, the Owner of the Evergreen Parcel or their respective Permittees at any time, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith. Subject to the foregoing and reasonable advance notice to the Owners of the Chase Parcel and the Owners of the Evergreen Parcel, at any time and from time to time Village shall have the right to relocate to, from or within the Village Parcel any utility line or facility, and provided further that the Village covenants and agrees to use commercially reasonable efforts to minimize the extent and duration of any resulting disruption to the use of the Village Parcel. Notwithstanding the foregoing, at no time will the Village close access to both Kedzie Avenue and Troy Avenue, it being understood and agreed by the Village that during the performance of any such utility relocation, the Owner of the Chase Parcel, the Owner of the Evergreen Parcel or their respective Permittees shall have access over the Village Parcel to either Kedzie Avenue and Troy Avenue. The Owner of the Chase Parcel shall have the right, but not the obligation, to maintain and improve the Village Parcel, including but not limited to the construction of pavement, curbs and gutters, sidewalks, and drainage structures. Prior to performing any construction, a permit application shall be made to the Village detailing the proposed construction which permit shall be issued upon approval of the Village Engineer.

3. Compensation:

A. The Owner of the Chase Parcel agrees to pay to the Village an annual fee (the "Chase Fee") for the use of the Village Parcel as permitted in this Agreement. The first installment of the Chase Fee shall be \$10,000 and shall be paid to the Village on the issuance of the building permit for the construction of the bank building on the Chase Parcel. On every anniversary date thereafter, a Chase Fee equal to the prior year Chase Fee increased by 2.0% shall be paid to the Village.

B. The Owner of the Evergreen Parcel acknowledges and agrees that it is responsible for payment of one half (1/2) of the amount of the Chase Fee payable to the Village and covenants and agrees to reimburse the Owner of the Chase Parcel for its share of the Chase Fee (the "Evergreen Fee"). The first installment of the Evergreen Fee shall be \$5,000 and shall be paid to the Owner of the Chase Parcel on the issuance of the building permit for the construction of the bank building on the Chase Parcel. On every anniversary date thereafter, an Evergreen Fee equal to the prior year Evergreen Fee increased by 2.0% shall be paid to the Owner of the Chase Parcel as reimbursement for the Owner of the Evergreen Parcel's share of the Chase Fee. If the Owner of the Evergreen Parcel fails to timely reimburse the Owner of the Chase Parcel for the Evergreen Fee, the Owner of the Evergreen Parcel shall be in default hereunder. Any claim for reimbursement, and all costs and expenses including reasonable attorneys' fees awarded to the Owner of the Chase Parcel in connection with the exercise of its rights set forth in this Agreement in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the Owner of the Evergreen Parcel in favor of the Owner of the Chase Parcel and shall constitute a lien (the "Assessment Lien") against the Evergreen Parcel of until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Cook County, Illinois; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all first mortgage liens, whenever recorded, and all liens recorded in the Office of the County Recorder of Cook County, Illinois prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein (except first mortgage liens) shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the Owner of the Evergreen Parcel of such default for which a notice of lien was recorded, the Owner of the Chase Parcel shall record an appropriate release of such notice of lien and Assessment Lien.

4. Rights Reserved: Village expressly reserves the following rights with respect to the Village Parcel:

(a) The right to construct, maintain, relocate and remove public utilities, including but not limited to, the right to construct, relocate and remove new or existing

curb cuts, driveways, paving and sidewalks on any portion of the Village Parcel; provided that such maintenance, relocation, removal, construct, repair and replacement shall be reasonably undertaken in a manner so as to minimize interference with the normal flow of customer vehicular and pedestrian traffic within the respective Parcels and does not preclude use and operation of the Village Parcel for pedestrian and vehicular access to and from the Parcels, over and across the Village Parcel, to and from adjacent streets and right of ways; and provided further that except in cases of emergency, reasonable advance written notice of such work in the Village Parcel is provided to the Owner of the Chase Parcel and the Owner of the Evergreen Parcel;

(b) The right to temporarily barricade any portion of the Village Parcel as shall be reasonably necessary for purposes of installing, maintaining, relocating and repairing curb cuts, driveways, paving and sidewalks therein and for installing, maintaining, repairing or replacing any utility lines and facilities therein, provided that such installation, maintenance, repair and replacement shall be reasonably undertaken in a manner so as to minimize interference with the normal flow of customer vehicular and pedestrian traffic within the respective Parcels and provided further that except in cases of emergency, reasonable advance written notice of such barricade shall be provided to the Owner of the Chase Parcel and the Owner of the Evergreen Parcel and that in no event shall the barricade preclude access to either Kedzie Avenue or Troy Avenue, it being understood and agreed that at all times during the Agreement the Owner of the Chase Parcel, the Owner of the Evergreen Parcel and their respective Permittees shall have use of the Village Parcel for access to at least one of the two public rights of way referenced hereinabove; and

(c) The rights of private utilities including electricity, telephone, natural gas, and cable TV to maintain existing facilities within the Village Parcel and to maintain, repair, and replace such facilities provided that none of those actions shall materially impair or restrict the use of the Village Parcel intended under this Agreement.

5. Use of Easements: Evergreen and Chase acknowledge and agree that the Village Parcel is provided in an "As Is" condition with all faults, including both latent and patent defects and subject to all easements and encumbrances of record. The Village shall not be obligated to remove or cause the removal of any power poles, utility lines, private utilities or public utilities to allow the use of the Village Parcel as contemplated by this Agreement. Evergreen and Chase covenant and agree that they shall not in the exercise of the rights granted herein unreasonably interfere with or obstruct the use by Village, its employees, agents, invitees or contractors, of the Village Parcel, including but not limited to Village's location, construction or maintenance of any improvements; provided however, it is understood and agreed to by the Village that the Village will not construct or install any improvements in the Village Parcel which will impair the use and operations of such Village Parcel as an access drive between Kedzie Avenue and Troy

Avenue by the Owner of the Chase Parcel, the Owner of the Evergreen Parcel and their respective Permittees.

6. Indemnification and Insurance:

A. The Owner of the Chase Parcel agrees to indemnify, defend and hold harmless the Owner of the Village Parcel from and against any and all liability, claims, damages, expenses (including reasonable attorneys fees and reasonable attorneys fees on any appeal), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property resulting from the willful misconduct or negligent act or omission of the Owner of the Chase Parcel, its agents, contractors or employees. In addition to the foregoing, the Owner of the Chase Parcel shall provide and maintain commercial general liability insurance, which shall include contractual liability coverage, with broad form coverage insuring the Owner of the Chase Parcel against claims for personal injury, bodily injury or death, and property damage arising out of the negligent act or omission of the Owner of the Chase Parcel in exercising its rights and performing its obligations hereunder. Such insurance shall be written with an insurer licensed or authorized to do business in the State of Illinois and the Owner of the Village Parcel shall be named on the policy as additional insured. The limits of liability of all such insurance shall be a combined single limit (covering personal injury, bodily injury and property damage) of \$1,000,000 per occurrence.

B. The Owner of the Evergreen Parcel agrees to indemnify, defend and hold harmless the Owner of the Village Parcel from and against any and all liability, claims, damages, expenses (including reasonable attorneys fees and reasonable attorneys fees on any appeal), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property resulting from the willful misconduct or negligent act or omission of the Owner of the Evergreen Parcel, its agents, contractors or employees. In addition to the foregoing, the Owner of the Evergreen Parcel shall provide and maintain commercial general liability insurance, which shall include contractual liability coverage, with broad form coverage insuring the Owner of the Evergreen Parcel against claims for personal injury, bodily injury or death, and property damage arising out of the negligent act or omission of the Owner of the Evergreen Parcel in exercising its rights and performing its obligations hereunder. Such insurance shall be written with an insurer licensed or authorized to do business in the State of Illinois and the Owner of the Village Parcel shall be named on the policy as additional insured. The limits of liability of all such insurance shall be a combined single limit (covering personal injury, bodily injury and property damage) of \$1,000,000 per occurrence.

7. Use Restrictions: None of the following uses shall be permitted on the Chase Parcel or the Evergreen Parcel:

(a) Unlawful uses; uses that are a public or private nuisance; uses that emit obnoxious odors or noises that can be readily heard outside of the building which is the source of the noise (other than sounds associated with normal business and building functions, such as delivery vehicles and activities, heating and air conditioning equipment, speaker systems for customer communications in drive-up or drive-through facilities, and the like); dangerous or hazardous uses; or an obnoxious use by reason of unsightliness or excess emission of dust, fumes, smoke, liquid waste, glare, vibration or radiation.

(b) An adult media store ("media" includes books, magazines, videos, DVDs, CDs and other print or electronic media); a massage parlor; a night club or other establishment that provides live adult entertainment (including without limitation the display or exhibition of nude or semi-nude dancers, entertainers or wait staff); any business that sells, rents or exhibits pornographic or obscene materials.

8. Covenants Run With the Land: Each easement and restriction on each Parcel shall be a burden on such Parcel, shall be appurtenant to and for the benefit of each other Parcels and each part thereof and shall run with the land.

9. Successors and Assigns: This Agreement and the easements and restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

10. Modification and Termination: This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of the Village Parcel, the Owner of the Chase Parcel and the Owner of the Evergreen Parcel, and then only by written instrument duly executed and acknowledged by the Owners required herein to be a party thereto and recorded in the Office of the Recorder of Deeds of Cook County.

11. Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Agreement shall entitle the Owner of a Parcel to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

12. Default/Remedies: An Owner of a Parcel shall be deemed to be in default of this Agreement only upon the expiration of thirty (30) days from receipt of written notice from the other Owner of another Parcel specifying the particulars in which such Parcel Owner has failed

to perform the obligations of this Agreement unless such Parcel Owner, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice of default. However, such Parcel Owner shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period and such Parcel Owner is acting in good faith and employing its best efforts to rectify the particulars specified in the notice of default. 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), 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 JPMorgan Chase Bank, N.A. (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.

13. Notices: (a) All notices given pursuant to this Agreement shall be in writing and shall be given by United States certified mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

Village: Mayor
Village of Evergreen Park
9418 South Kedzie Avenue
Evergreen Park, IL 60805

Evergreen: c/o First Equity Group, LLC
Attn: Thomas Lowe
150 N. Wacker Dr., Suite 1717
Chicago, Illinois 60606

And to:

Stahl Cowen Crowley Addis LLC
Attn: Thomas G. Moffitt
55 West Monroe, Suite 1200
Chicago, Illinois 60603

Chase: JPMorgan Chase Lease Administration
1111 Polaris Parkway, Suite 1J
Mail Code OH1-0241
Columbus, OH 43240
Attn: Lease Administration Manager

And to:

JPMorgan Chase Bank, N.A.
237 Park Avenue, 12th Floor
Mail Code: NY1-R066
New York, New York 10017-3140
Attn: Regional Manager of Real Estate

JPMorgan Chase Law Department
1111 Polaris Parkway, Suite 4P
Mail Code OH1-0152
Columbus, OH 43240
Attn: Real Estate Counsel

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

14. Waiver: The failure of a person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.

15. Severability: If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term

and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

16. Captions and Headings: The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

17. Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

18. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

19. Entire Agreement: This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

20. Recordation: This Agreement shall be recorded in the office of the recorder of the county in which the Parcels are located.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed effective as of the day and year first above written.

Village of Evergreen Park:

By: _____

Name: James J. Sexton

Title: Mayor

Date: April 4, 2011

JPMorgan Chase Bank, N.A., a national banking association

By: _____

Name: _____

Title: _____

Date: _____

Evergreen Partners Fund I, LLC, an Illinois limited liability company

By: Its Manager, 95th Fund I & II, LLC, an Illinois limited liability company

By: Its Manager, First Equity Property Holdings, LLC, an Illinois limited liability company

By: _____
Timothy Gallagher, its Manager

Evergreen Partners Fund II, LLC, an Illinois limited liability company

By: Its Manager, 95th Fund I & II, LLC, an Illinois limited liability company

By: Its Manager, First Equity Property Holdings, LLC, an Illinois limited liability company

By: _____
Timothy Gallagher, its Manager

NOTARY PAGE TO FOLLOW

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

The foregoing instrument was acknowledged before me this 4th day of April, 2011, by James J. Sexton, as Mayor of the Village of Evergreen Park on behalf of such Village.

Notary Public
My Commission Expires: September 4, 2013

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of _____, a(n) _____, on behalf of the _____.

Notary Public
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, as _____ of _____, a(n) _____, on behalf of the _____.

Notary Public
My Commission Expires: _____

SCHEDULE I

“VILLAGE PARCEL”

THE 16-FOOT EAST/WEST ALLEY LYING SOUTH OF AND ADJOINING LOTS 2 THROUGH 11, INCLUSIVE, IN THE SUBDIVISION OF LOT 12 OF KING ESTATES SUBDIVISION IN EVERGREEN PARK, IN THE NORTHWEST ¼ OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SCHEDULE II

“CHASE PARCEL”

LOTS 4 THROUGH 11, ALL INCLUSIVE, IN A SUBDIVISION OF LOT TWELVE (12) OF KING ESTATE SUBDIVISION OF EVERGREEN PARK, BEING PART OF THE NORTHWEST QUARTER (1/4) OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 5, 1925, AS DOCUMENT 267300, IN COOK COUNTY, ILLINOIS.

PINS: 24-12-100-001-0000
 24-12-100-002-0000
 24-12-100-075-0000
 24-12-100-007-0000
 24-12-100-008-0000

Commonly Address: 3159 West 95th Street, Evergreen Park, Illinois 60805

SCHEDULE III

"EVERGREEN PARCEL"

LOTS 12 THROUGH 20, ALL INCLUSIVE, LOT 22 (EXCEPT THE SOUTH 7.26 FEET THEREOF), AND LOTS 23 THROUGH 26, ALL INCLUSIVE, IN A SUBDIVISION OF LOT TWELVE (12) OF KING ESTATE SUBDIVISION OF EVERGREEN PARK, BEING PART OF THE NORTHWEST QUARTER (1/4) OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 5, 1925, AS DOCUMENT 267300, IN COOK COUNTY, ILLINOIS.

PINS: 24-12-100-011-0000 through 24-12-100-019-0000
 24-12-100-078-0000
 24-12-100-079-0000
 24-12-100-080-0000

Commonly Address: 9505 South Kedzie Avenue, Evergreen Park, Illinois 60805 and
 9520 - 9528 South Troy, Avenue, Evergreen Park, Illinois 60805