

Appleton & Burlington

REEL 1647 IMAG 662

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REEL 1647 IMAGE 662 to

W.M. Buehl REGISTER OF DEEDS 670 incl

Return to ✓
John Lacenski
The Derse Co.
1234 N. 62nd St.
Milw. 53226

DECLARATION OF EASEMENT

THIS EASEMENT AGREEMENT, made and entered into this 1st day of JUNE, 1984, by and among The Derse Company, a Wisconsin Corporation, hereinafter referred to as DERSE or GRANTEE, DHL Leasing Company, a Wisconsin General Partnership of James F. Derse, Thomas A. Derse, John E. Lacenski, and William M. Hayes, hereinafter referred to as DHL, and Alex J. Seny and Donna M. Seny, hereinafter referred to as SENY or GRANTOR.

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WITNESSETH:

WHEREAS, SENY has, as of the date hereof, purchased from DERSE certain real estate located in the City of Milwaukee, Milwaukee County, Wisconsin, which real estate is hereinafter sometimes referred to as the SENY PROPERTY and which is more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference; and

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WHEREAS, there presently exists on the SENY PROPERTY, among other improvements, one (1) 20' x 60' illuminated off premises outdoor advertising structure erected on single steel pipe upright ("Billboard"), which is owned by DHL and which is leased to DERSE or its successors or assigns notwithstanding that the SENY PROPERTY has been sold to SENY, and

WHEREAS, in the event of default on the part of DERSE or its successors or assigns in performance of its lease obligations to DHL or in the event that DERSE or its successors or assigns elects not to renew the lease with DHL or its successors or assigns, this easement will pass to DHL and DHL shall be the successor of the full rights of the easement as expressed herein,

001

and,

WHEREAS, the agreement of **SENY** with **DERSE** for the purchase of the **SENY PROPERTY** was conditioned upon covenants by **SENY** to:

- i. Grants to **DERSE** and/or **DHL**, their successors and assigns, and their tenants, occupants or licensees a permanent and perpetual exclusive easement in, on, under, through, across and over the **SENY PROPERTY** for the Billboard, together with the right of ingress and egress thereto, with the right to construct, operate, maintain, inspect, repair, enlarge, reconstruct and relocate as provided herein, as may be or may become applicable, said Billboard and the appurtenances thereto; and
- ii. Restrict all other signs on the **SENY PROPERTY**.

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

1. **Facilities** shall be defined herein to include, but shall not be limited to:

- i. a structure, (whether of pylon, tower, pole or other type) designed for affixing a sign(s) and/or copy face(s);
- ii. Sign(s) and/or copy face(s) on said structure; and
- iii. Customary facilities and equipment (including electrical to said structure and sign(s)

presently owned by **DHL** and leased to **DERSE**, or as enlarged, reconstructed or relocated in accordance with this Agreement.

2. **SENY** does for himself and his heirs, personal representatives, tenants, occupants, licensees, successors and assigns hereby grant unto **DERSE** and **DHL** and their respective successors, assigns, agents, employees, invitees, designees, tenants, occupants and licensees a permanent and perpetual exclusive easement for the aforementioned **facilities** including the portion thereof which overhangs the roof of the existing structure on the **SENY PROPERTY** with the right of entry upon, over, through and across the curb openings, accessways and drives from time to time located on the **SENY PROPERTY** for the purpose of affording vehicular and pedestrian passage to, from

and between (ingress and egress) the real estate hereinafter described and with the right to construct, operate, maintain, inspect, repair, enlarge, reconstruct and relocate as may be or may become applicable, said **facilities** in, on, under, through, across and over the following described property, to-wit:

Description: The north 50 feet of Lots 9 and 10 and the north 50 feet of a part of Lot 8 described as follows: beginning at the northwest corner of Lot 8, thence East 11.75 feet to the northeast corner of said Lot 8; thence S.40°15'E. along the northeasterly line of said Lot 8, 36.63 feet to a point; thence S.49°45'W. 34.11 feet to a point which is 50.00 feet southerly of the north line of said Lot 8; thence West and parallel with the north line of said Lot 8, 10.00 feet to a point in the west line of said Lot 8; thence N.00°42'E. along the said west line, 50.00 feet to the point of beginning, all in Block 1, in Lenox Heights, being a Subdivision of the North East 1/4 of Section 15, Township No. 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

3. This easement will reserve unto **DERSE** the right to shift that part of the sign, attached to the single pole upright, to a new position with the pipe remaining in position as it presently exists. However, in the event of condemnation or taking of that part of the premises in which the upright pipe and/or footing is located, **DERSE** reserves the right to relocate the upright to a new position on the premises. **SENY** agrees to obtain subordination of his financing, if any, to this easement.

4. In conjunction with the foregoing, **SENY** for himself and his heirs, personal representatives, successors, and assigns hereby grants unto **DERSE**, **DHL**, and their successors or assigns, agents, employees, invitees, designees, tenants, occupants and licensees a permanent and perpetual exclusive easement to lay, maintain, repair, relocate and replace either underground or overhead electrical conduit, cables, wires or lines for illuminating and operating such sign(s), in, on, under, through, across and over both the **SENY PROPERTY** and the **facilities**

for connection with electrical conduit, cables, wires or lines on the **SENY PROPERTY**.

5. **SENY** and **SENY'S** tenants, if any, will not permit any part of the **SENY PROPERTY** to be used for advertising purposes, or permit the erection or maintenance of on-premise advertising signs or other advertising matter on any other part of the **SENY PROPERTY** without in each instance obtaining **DERSE'S** prior written approval, which approval will not unreasonably be withheld. **SENY**, however, will be permitted to install, on total premises outlined in Exhibit "A", up to 250 square feet of on-premise business signs for those activities conducted on the premises. However, any such signs installed shall, if illuminated, be illuminated by steady burning, non-flashing lights and such lighting shall not give any back glare that would be visible when viewing the advertising sign of **DERSE** or **DHL**. No bare bulbs will be installed on premises and any pennants installed shall not be higher than fifteen (15') feet above grade of parking area. It is the essence of this agreement that **SENY** will not, under penalty of damages and/or injunctive relief:

i. permit any other temporary or permanent on-premise sign(s), advertising structures or any other plantings or improvements whatsoever to be placed on the **SENY PROPERTY**, or any adjacent real estate now or hereafter owned or controlled by **SENY**, in such a way as to obstruct partially or entirely the view or lessen the advertising value of the facilities, or

2. rent or lease any part of the **SENY PROPERTY** or any adjacent real estate now or hereafter owned or controlled by **SENY**, for off-premise advertising copy or structures, or allow thereon any other plantings or improvements whatsoever which would obstruct partially or entirely the view or lessen the advertising value of the facilities. **DERSE** in its sole discretion is hereby authorized by **SENY** to remove any such offending signs, structures, plantings or improvements, at the cost and expense of **DERSE**, and in the event that **DERSE** does remove any such impediment, then it is hereby afforded a lien upon the **SENY PROPERTY** to secure the payment of said costs and expenses, with interest thereon at the rate of eighteen (18%) percent per annum until paid in full, together with the costs of collection, including reasonable attorneys' fees. Such lien to be enforced as if it were a construction lien.

6. **DERSE** shall pay all personal property taxes levied against the **facilities** and, in addition, if the **facilities** are illuminated, the cost of any electrical current utilized by **DERSE**.

7. No structures may be placed within the limits of the easement area by **SENY** without the prior written approval of **DERSE**. **DERSE** shall not withhold its approval of any such structures, unless such structures would interfere with the view of, or advertising value of the **facilities**, or would interfere with access to the **facilities**. It is the intent of the parties with this subparagraph solely to preserve the view and advertising value of and access to the **facilities**. In the event that **SENY** violates this provision, **DERSE** is hereby authorized to remove such structure(s) at the sole cost and expense of **SENY** and in such event, **DERSE** is hereby afforded a lien upon the **SENY PROPERTY** to secure the payment of said costs and expenses, with interest thereof at the rate of eighteen percent (18%) per annum until paid in full, together with the costs of collection, including reasonable attorneys' fees. Such lien to be enforced as if it were a construction lien. **SENY** may continue to use the easement area for vehicle parking, provided that no vehicle shall exceed ten (10) feet in height or interfere with **DERSE'S** access to the **facilities**.

8. The **facilities** shall be maintained and kept in good order and condition by **DERSE**.

9. Exclusive of the footings, steel pipe upright and electrical service, lines, and time clock, the advertising part of structure shall be at least eighteen (18') above grade of parking area.

10. **SENY** shall pay all real estate taxes and special assessments levied on, assessed against, or attributable to the **SENY PROPERTY** prior to the same becoming delinquent and will provide **DERSE** annually with evidence of such payment. In the event that **SENY** violates this provision, **DERSE** may at its option pay such taxes and/or assessments and, in such event, **DERSE** is hereby afforded a lien upon the **SENY PROPERTY** to secure the

payment of such taxes, special assessments and the costs and expenses incident thereto, with interest thereon at the rate of of eighteen percent (18%) per annum until paid in full, together with the costs of collection, including reasonable attorneys' fees. Such lien to be enforced as if it were a construction lien.

11. The parties hereto agree that each of them shall, at their own cost and expense, make appropriate arrangements with their respective insurance companies to provide public liability insurance on the **SENY PROPERTY** and the **facilities**, respectively, with limits of at least \$100,000.00 for injuries or death arising out of any one accident and \$100,000.00 for injury or death to any one person, and \$100,000.00 property damage naming the other party as an additional insured. The policy limits on each such policy shall be increased from time to time to reasonably reflect the effects of inflation and changes in normal commercial insurance practices, and each party shall from time to time upon request provide evidence of such insurance.

12. Either party shall at any time upon not less than ten (10) days prior written notice from the other party, execute, acknowledge and deliver to the requesting party a statement in writing and in recordable form:

i. certifying that this agreement is unmodified and in full force and effect (or is modified, stating the nature of such modification and certifying that this agreement, as so modified, is in full force and effect), and

ii. acknowledging that there are not, to such party's knowledge, any sums due such party under this agreement, or specifying such sums if they are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of either the **SENY PROPERTY** or the **facilities**.

13. The rights and obligations created by this Agreement and instrument shall inure to the benefit of and be binding upon **SENY** and **DERSE** and **DHL**, and their respective heirs, personal representatives, successors, assigns, tenants, occupants and licensees.

14. This Agreement shall not be modified, amended, or in any manner altered or terminated without the express written

approval of the then owners of the **SENY PROPERTY** and the **facilities** being obtained and without obtaining the express written approvals of the holders of any mortgage or other security in the **SENY PROPERTY** and/or **facilities**.

15. **SENY** further agrees that the easements granted hereunder shall be deemed prior to any mortgage, deed of trust or other lien against all or any part of the **SENY PROPERTY** and that a foreclosure of any such lien or encumbrance against the **SENY PROPERTY** will in no event affect or impair the easements granted by this Agreement. **SENY**, his heirs, successors and assigns, agree to obtain subordination of financing, if any, to this Agreement.

16. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees.

17. No remedy herein conferred upon or otherwise available to the parties hereto is intended to be or shall be construed to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given hereunder and now or hereafter existing at law, in equity, or by statute.

18. From time to time after the execution hereof, at the request of **DERSE**, **SENY** will do, execute and deliver, or cause to be done, executed and delivered, all further instruments as **DERSE** may require for carrying out the intention of or facilitating the performance of this Agreement.

19. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall then be construed as

if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS HEREOF, the parties hereto have set their hands and seals the day, month, and year first above written.

THE DERSE COMPANY, INC.
a Wisconsin Corporation,

By: Alex J. Seny (SEAL)
Alex J. Seny

By: John E. Lacenski
John E. Lacenski
Vice President

By: Donna M. Seny (SEAL)
Donna M. Seny

ATTEST:

By: William M. Hayes
William M. Hayes
Assistant Secretary

DHL LEASING

By: John E. Lacenski
John E. Lacenski
General Partner

By: William M. Hayes
William M. Hayes
General Partner

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE) ss:

Personally came before me this 1 day of June, 1984, the above-named Alex J. Seny and Donna M. Seny, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Dean M. Zwick
DEAN M. ZWICK
Notary Public, State of Wisconsin.
My commission expires: 3-13-88

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE) ss:

Personally came before me this 1 day of June, John E. Lacenski, having acknowledged to be the Vice President of The Derse Company, Inc., and a general partner of DHL Leasing Company, and William M. Hayes, having acknowledged to be the Assistant Secretary of The Derse Company, Inc. and a general partner of DHL Leasing, to me known to be the persons who executed the foregoing instrument.

Dean M. Zwick
DEAN M. ZWICK
Notary Public, State of Wisconsin.
My commission expires: 3-13-88

THIS INSTRUMENT WAS DRAFTED BY:
Michael M. Hayes, Attorney at Law,
a member of the State Bar of Wisconsin.