

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 2/1/2014 8:29:40 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
144269	EASEMENT		57323/25	08/19/2011	0.00
Property-Street Address and/or Description					
235 CAMBRIDGE ST					
Grantors					
BURLINGTON HEIGHTS LLC					
Grantees					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					



DECLARATION OF EASEMENTS AND COVENANTS

This Declaration of Easements and Covenants ("Declaration") is made as of the 19 day of August, 2011, by Burlington Heights LLC ("Declarant"), a Massachusetts limited liability company having its principal place of business at 27 Cambridge Street, Burlington, Massachusetts 01803.

WHEREAS, the Declarant is the owner of certain land and improvements thereon in the Town of Burlington, Massachusetts, depicted as "Lot 2" (56,378 S.F.±, 1.29 AC. ±) and "Lot 3" (66,678 S.F.±, 1.53 AC. ±) on a certain "Approval Not Required and Easement Plan of Land" dated May 3, 2011 prepared by Commonwealth Engineering, Inc. (the "Plan"), which Plan was recorded with the Middlesex South District Registry of Deeds as Plan No. 499 of 2011; and

WHEREAS, the Declarant intends to establish a condominium to be known as the Burlington Heights 235 Condominium (the "Condominium") upon said Lot 3 pursuant to Massachusetts General Laws Chapter 183A; and

WHEREAS, upon the formation of said Condominium upon Lot 3, the Declarant intends to maintain its ownership of the adjacent Lot 2, while reserving the right to either include said Lot 2 in the Condominium at a later date as provided in the Master Deed of the Condominium, or maintain separate ownership of said Lot 2, at the Declarant's election; and

WHEREAS, the establishment of certain access and utility easements (the "Easements") are necessary over, under and upon Lot 3 in order to provide for the development and use of Lot 2 and the improvements thereon; and

WHEREAS, the Declarant therefore desires to hereby establish such Easements for the benefit of Lot 2 as more fully described hereinafter, to be effective upon the establishment of the Condominium upon Lot 3 and to continue for so long as Lot 2 is in separate ownership from Lot 3 and not phased in as part of the Condominium.

NOW, THEREFORE, in consideration of the foregoing, the Declarant hereby declares and establishes the following Easements and Covenants.

I. EASEMENTS

- A. Easement Area. The Easements provided for hereunder shall be located upon and under the area of Lot 3 described on Schedule A attached hereto (the "Easement Area").

235 Cambridge St Burlington

U

✓

- B. Easement Rights. The owners and occupants of Lot 2 shall have non-exclusive Easements over and beneath the Easement Area on Lot 3 for the construction of access and utility infrastructure and improvements benefitting Lot 2, and for the ongoing construction, installation, maintenance, repair, replacement and use of infrastructure and related improvements, and for vehicular access (including construction vehicles), pedestrian access, parking, drainage and utility purposes, upon the terms set forth herein. Such Easements shall not be exclusive, but rather shall be shared with the owners and occupants of Lot 3. More specifically, it is contemplated that the driveways, roadways, exterior walkways, exterior parking spaces, drainage facilities, and utility lines and facilities designed for shared use (collectively, the "Shared Facilities") may be used by the owners and occupants of both Lot 2 and Lot 3.
- C. Maintenance, Repair and Replacement of the Shared Facilities. Once initial construction and installation is completed, the ongoing maintenance, repair and/or replacement of the Shared Facilities shall be carried out by the owner(s) of Lot 3 (which may be the Declarant of the Condominium and/or the Trustees of the Condominium), subject to the terms and provisions hereof, including the cost-sharing provisions and obligations set forth below. In the event that the owner(s) of Lot 3 do not carry out necessary maintenance, repairs and/or replacement, the owner(s) of Lot 2 may assume such responsibility if they so elect, upon reasonable advance written notice to the owner(s) of Lot 3.
- D. Further Terms of, and Limitations on, Easement Rights. The Easements established hereunder in favor of Lot 2 shall be subject to the following terms and limitations:
- (1) The exterior parking spaces established upon the Easement Area are intended to be for the common use of the owners and occupants of both Lot 2 and Lot 3, such that each of said Lots shall have equal use and benefit therefrom.
 - (2) The owners of Lot 3 (which term shall be deemed to include the Declarant and the Trustees of the Condominium established upon Lot 3) may make whatever use of the Easement Areas which they deem necessary, prudent or desirable (including, without limitation, the construction and maintenance of further improvements and/or landscaping thereon), and may establish reasonable rules and regulations governing the use of the Easement Areas for their intended purposes; provided, however, that such further uses, improvements, rules and/or regulations shall not materially and adversely affect the Easement rights hereby conferred upon Lot 2.

- (3) The owners of Lot 3 may temporarily suspend the Easement rights hereby established, to the extent reasonably necessary, in order to carry out improvements, maintenance, repairs and replacements of the Easement Areas and/or the Shared Facilities. Likewise, the owner(s) of Lot 2 may temporarily interrupt the use of the Shared Facilities, as necessary, in connection with the development and use of Lot 2. Any such suspension of use and/or services, however, shall only be for such time as is reasonably necessary, such that the adverse impacts of such suspension upon the owners and occupants of Lot 3 shall be minimized, to the extent reasonably possible.
- (4) Once construction of the Shared Facilities has been completed upon and under Lot 3, they may thereafter be relocated upon the request of the owners of either Lot 2 or Lot 3, as long as (a) any such relocation of the Shared Facilities is carried out at the sole cost and expense of the requesting party, and with no or minimal disruption of use and service, and (b) any area disturbed by such relocation activity is reasonably restored, promptly and at the sole cost and expense of the requesting party.

II. COVENANTS

- A. Cost-Sharing. Except as provided elsewhere in this Declaration, the Costs and Expenses relating to the ongoing maintenance (including, without limitation, snow and ice removal), repair and replacement of the Shared Facilities shall be borne by the owners of Lot 2 and Lot 3 as follows:
- (1) Prior to Active Development Upon Lot 2: Until such time as the owner of Lot 2 commences use of the Easements hereby established in connection with the construction and development of improvements upon Lot 2, all costs and repairs relating to the Shared Facilities shall be borne solely by the owners of Lot 3.
- (2) During Development of Lot 2: During the period in which the improvement and development of Lot 2 is being carried out and the Easements established hereunder are being utilized by the owner of Lot 2 strictly for development purposes, the costs and expenses relating to the Shared Facilities shall be borne as follows: 15% by Lot 2 and 85% by Lot 3.
- (3) Upon Initial Use and Occupancy of Lot 2: Upon commencement of use and occupancy of any building upon Lot 2 (as evidenced by the issuance of a Certificate of Occupancy therefor by the Town of Burlington) and thereafter, the costs and expenses relating to the Shared Facilities shall be borne equally by the owners of Lot 2 and Lot 3.

- B. Costs and Expenses Not to be Shared. Any costs and expenses relating to the construction, installation, maintenance, repair and/or replacement of any improvements or facilities upon or under the Easement Area which do not constitute Shared Facilities shall be borne, and exclusively carried out, by the party or parties benefiting therefrom. In addition, any costs or expenses incurred for the maintenance, repair and/or replacement of any Shared Facilities which are caused or necessitated by the construction activities, negligence, wrongful acts, or willful misconduct of any party subject to this Declaration (or such party's employees, agents, representatives, contractors, licensees or invitees) shall be borne solely by that party.

III. MISCELLANEOUS PROVISIONS.

- A. Amendment. The Declarant expressly hereby reserves the right to record amendments to this Declaration for so long as it owns Lot 2, Lot 3 or any portion thereof or interest therein; provided, however, that no such amendment executed and recorded by the Declarant shall adversely and materially affect any easement right or other right of any other owner subject hereto without the express written consent of such owner. (For all purposes arising under this Declaration, the "owner" of any land subject to this Declaration which is subjected to condominium ownership shall be deemed to be the board of trustees or other governing board of such condominium association, and not the owners of condominium units therein.) At such time as the Declarant no longer holds such ownership interests (or at any earlier time hereafter designated in writing by the Declarant), such right and ability to so amend this Declaration shall be subject to the written consent of the owners of both Lot 2 and Lot 3 (or the governing board(s) of condominium associations relating thereto, as applicable), which consent shall not be unreasonably withheld.
- B. Enforcement. Enforcement of the terms and provisions of this Declaration may be at law or in equity, against any person or party violating or attempting to violate same or in default of any obligation hereunder, either to restrain the violation or to recover damages, or both. Such enforcement actions may be prosecuted by the Declarant, its designee, or any owner of a Lot subject to this Declaration. The failure of any party to enforce any provision hereof shall in no event be deemed a waiver of the right to do so in any instance thereafter. In the event of a successful action to enforce the terms and provisions hereof, the parties successfully seeking such enforcement shall be entitled to recover his, her or its reasonable attorneys' fees and costs.

Executed as an instrument under seal this 19 day of August, 2011.

DECLARANT:

BURLINGTON HEIGHTS LLC

By [Signature]
Robert W. Murray, Manager and
Real Property Signatory, duly authorized

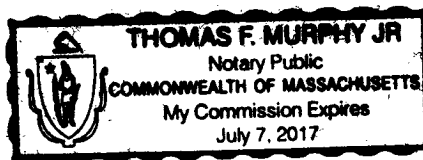
COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 19 day of August, 2011, before me, the undersigned Notary Public, personally appeared the above-named Robert W. Murray, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as the duly-authorized (check whichever applies): Manager, Member, Real Property Signatory of Burlington Heights LLC.

[Signature]

(Print Name of Notary Public): Thomas F. Murphy Jr
My Commission Expires: _____
Qualified in the Commonwealth of Massachusetts



SCHEDULE A – DESCRIPTION OF EASEMENT AREA

Being the area shown on a plan prepared by Commonwealth Engineering Inc., 27 Cambridge Street, Burlington, Massachusetts 01803, entitled "Approval Not Required and Easement Plan of Land" dated May 3, 2011, which plan was recorded with the Middlesex South District Registry of Deeds as Plan No. 499 of 2011, and more particularly described as follows:

Beginning at an Iron Rod set at the Southeasterly corner of Lot 3;

Thence S 58° 44' 18"W a distance of 145.00 feet to a point;
 Thence N20° 53' 13"W a distance of 69.00 feet to a point;
 Thence N31° 15' 42"W a distance of 3.00 feet to a point;
 Thence N58° 44' 18"E a distance of 9.60 feet to a point;
 Thence N31° 15' 42"W a distance of 3.00 feet to a point;
 Thence N32° 27' 50"W a distance of 228.00 feet to a point;
 Thence S68° 45' 59"W a distance of 19.95 feet to a point;
 Thence N29° 51' 11"W a distance of 91.84 feet to a point;
 Thence N57° 30' 22"E a distance of 203.97 feet to a point of non-tangency on a curve having a radius of 1470.50 feet;
 Thence along said non-tangent curve to the right, an arc length of 159.27 feet and a chord bearing of S26° 06' 26"E and a chord distance of 159.19 feet to a point of non-tangency;
 Thence S20° 53' 15"E a distance of 246.98 feet to a point, it being the POINT OF BEGINNING.

Containing 66,678 S.F.± (1.531 AC.±)

But excluding from such Easement Area the portion of such land being Area "A" as shown on said plan and more particularly described as follows:

Commencing at the Southeasterly corner of Lot 3;
 Thence N27° 53' 35"W a distance of 126.56 feet to the Point of Beginning;
 Thence S 66° 37' 41"W a distance of 66.67 feet to a point;
 Thence N23° 22' 19"W a distance of 208.92 feet to a point;
 Thence N66° 37' 41"E a distance of 66.67 feet to a point;
 Thence S23° 22' 19"E a distance of 208.92 feet to the Point of Beginning.

Containing 13,929 S.F. (0.320 AC.±)

And also excepting the areas depicted on such plan as "Permanent Easements per Rizzo Final Submission Dated July 12, 2007."