

Doc-1



2008 00166746

### GRANT OF FOUNTAIN EASEMENT

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WHEREAS, the City of Newton, a municipal corporation with offices at Newton City Hall, 1000 Commonwealth Avenue, Newton (hereinafter called "Grantor"), its successors and assigns, is the owner of real property known as Lot 2 containing 8,400 sq. ft., more or less ("Lot 2"), as more particularly shown on a plan entitled "Plan of Land showing Lot Division, Conservation Restriction Area, and Conservation Restriction and Easement Area, 230 Lake Avenue, Newton, Massachusetts, April 16, 2008 Scale 1"=20' city of Newton D.P.W. Engineering Division, 1000 Commonwealth Avenue, Newton, Mass., Louis M. Taverna P.E. City Engineer", recorded with the Middlesex South Registry of Deeds as Plan No. 847 of 2008 (the "Plan"); and

WHEREAS, Semyon Dukach ("Grantee") is the owner of 230 Lake Avenue, Newton, Middlesex South County, Massachusetts, more particularly shown on said Plan as Lot 1; and

WHEREAS, said Plan shows a Patio/Fountain (the "Fountain"), part of which is located on Lot 1 and part of which is located on Lot 2; and

WHEREAS, Grantor and Grantee wish to establish rights and obligations for the use, maintenance and repair of said Fountain during the period of Grantee's ownership of 230 Lake Avenue; and

WHEREAS, it is desired by Grantor to subject Lot 2 to the Fountain Easement in favor of Grantee; and

WHEREAS, Grantee wishes to avail himself of the use and benefit of the Fountain Easement;

NOW, THEREFORE, for good and sufficient consideration, the receipt of which is hereby specifically acknowledged, the parties hereto agree as follows:

1. Grantor, subject to the terms and provisions of this Agreement, grants, to the extent that the Fountain Easement extends over portions of Lot 2, to Grantee an exclusive right and easement to pass and re-pass by foot over such portions of the Fountain Easement which is within the boundaries of Lot 2 as shown on said Plan recorded herewith for the sole purpose of repairing and maintaining said Fountain.
2. The Grantee shall have sole liability for and responsibility to and shall maintain the Fountain. Grantee acknowledges that Lot 2 is subject to a Conservation Restriction requiring that Lot 2 be kept in its natural state. Grantee agrees to notify Grantor's Parks and Recreation Commissioner of any exercise of his rights under this Fountain Easement, to utilize minimally disruptive methods in restoring, repairing, and maintaining the Fountain, and to restore Lot 2 to the condition in which it existed prior to any exercise of Grantee's rights hereunder.
3. The cost of such repairs, maintenance, groundskeeping and insurance of the Fountain shall be the sole responsibility of the Grantee.
4. The rights and easements granted hereunder are not extended, subject to the other provisions hereof, to the Grantee's guests, invitees, licensees and others on or about the Fountain Easement

*Rev. to:*  
**City of Newton Law Department  
1000 Commonwealth Avenue  
Newton Centre, MA 02459**

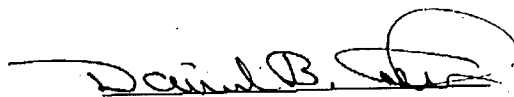
(collectively "Other Users") and the Grantee shall and does hereby indemnify and hold the Grantor, its guests, invitees, licensees and others on or about the Fountain Easement harmless from and against any liabilities arising out of, related to or in connection with the Grantee's exercise of said rights and easements and that of any Other Users excepting only that the Grantor is responsible and liable for the consequences of Grantor's own negligence.

5. The foregoing rights, restrictions, covenants, agreements and easements shall be exercisable and enforceable by the Grantor, its successors and assigns, and Grantee and any rights or easements granted or reserved hereunder shall not be assigned, transferred or conveyed to any individual or entity except in connection with Grantor's conveyance of the entire fee in its Lot.

6. The rights, restrictions, covenants, obligations, easements and agreements provided herein shall run with the land and shall not be modified or released except by an instrument in writing, duly recorded with the Middlesex South County Registry of Deeds, which instrument is executed by the then current owners of both Lot 2, Newton, MA and 230 Lake Avenue, Newton, MA.; provided, however, that this Fountain Easement shall terminate upon Grantee's conveyance of 230 Lake Avenue.

By their signatures below, Grantor and Grantee specifically acknowledge the terms and promises, rights and obligations hereof and agree thereto and agree to be bound by and comply with any and all terms, provisions and obligations hereby created and/or arising out of, related to or in connection with this Agreement, whether such obligations are express or implied and specifically submit their respective properties to the terms and provisions hereof and intend to and do hereby bind their heirs, successors, transferees and/or assigns of any and all interest in and to the real property described herein.

Witness our hands and seals this 7<sup>th</sup> day of October, 2008.



City of Newton, by its Mayor  
David B. Cohen

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this 7<sup>th</sup> day of ~~March~~ October, 2008 before me, the undersigned notary public, personally appeared David B. Cohen, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily, for its stated purpose.



Notary Public

My Commission Expires: \_\_\_\_\_

Personally Known  \_\_\_\_\_  
Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_

