

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

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
82016	EASEMENT		42435/220	04/07/2004	0.00
Property-Street Address and/or Description					
VINE PL 2004-348 & 2004-347					
Grantors					
KESSELER DEVELOPMENT LLC, NEWTON CITY, CORNERSTONE MANAGER INC`					
Grantees					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					



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EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is entered into as of the day of April, 2004, by and between KESSELER DEVELOPMENT, LLC a Massachusetts limited liability company, with an address of c/o Cornerstone Corporation, 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, "Cornerstone"), and the CITY OF NEWTON, a municipal corporation at 1000 Commonwealth Avenue, Newton, Massachusetts 02459 (hereinafter "City").

WHEREAS, Cornerstone Corporation and City entered into a Cooperative Bidding Agreement dated June 20, 2003, as amended by Amendment #1 dated August 7, 2003 and by Amendment #2 dated August 25, 2003 and by Amendment #3 dated April 6, 2004, in connection with the property known as Kessler Woods (hereinafter "Kessler Woods") located in Newton, Massachusetts, consisting of Lots C, D, G, H and J on the "Subdivision Plan of Land in Newton, MA" of Kessler Woods dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc. (the "Subdivision Plan") recorded with the Middlesex South Registry of deeds immediately prior hereto and designated by the Newton Board of Assessors as parcels 82-41-22 and 82-37-3 in order to allow Cornerstone and City to purchase the Kessler Woods, and to develop some portions of Kessler Woods for residences and to maintain other portions of Kessler Woods as conservation land.

WHEREAS, the City has acquired fee ownership of the parcels of Kessler Woods situated on the southerly side of Vine Street designated as "Lot C" and "Lot D" on the Subdivision Plan, as well as the southerly portion of the northerly parcel of Kessler Woods designated as "Lot G" on the Subdivision Plan (together, the "City Parcels"), and Cornerstone, as designee of Cornerstone Corporation, has acquired fee simple ownership of Lot H on the Subdivision Plan (hereinafter the "Cornerstone Parcel").

WHEREAS, portions of the Cornerstone Parcel are constrained from development due to utility easements, flood plain restrictions, wetlands and Inner Riparian zone restrictions under the Rivers Protection Act and are otherwise intended to be made subject to certain rights in favor of the City by the terms of this Easement Agreement (hereinafter the "Easement Area"). The Easement Area is demarcated as the "Easement Area" on a "Plan of Land Showing Conservation Restriction Area and Easement Area in Newton, MA" dated January 13, 2004, with revisions dated 2-9-04, 3-22-04 and 4-1-04 by Toomey-Munson & Associates, Inc. Civil Engineers and Land Surveyors and ~~attached hereto as Exhibit "A"~~ **RECORDED HEREWITH**

WHEREAS, Cornerstone intends to develop the portions of the Cornerstone Parcel which are not constrained from development into residential lots.

WHEREAS, Cornerstone and City have agreed, in connection with the Cooperative Bidding Agreement, for Cornerstone to provide City with certain rights and easements over the Easement Area in order to facilitate City's purpose of maintaining the Easement Area as publicly accessible conservation land.

NOW, THEREFORE, in consideration of the respective rights and obligations of Cornerstone and City in the Cooperative Bidding Agreement and the respective rights and

SEE PLAN IN RECORD BOOK 2004 PAGE 34

VINE ST NEWTON

2004 PAGE 34

MURTA COLLINA
600 UNICOMM' PARK DR
WOBURN MA 01801

easements granted herein, the receipt and sufficiency of which are hereby acknowledged, Cornerstone and City hereby agree as follows:

1. Incorporation of portions of Easement Area into development residential lots.

a. Cornerstone intends, subject to the terms of a certain Development Covenants Agreement of even date between Cornerstone and the City, to develop the Cornerstone Parcel for residential uses and to construct thereon residential units (in the aggregate the "Residential Units," and the parcels of land on which they shall be located, the "Residential Lots").

b. Cornerstone may incorporate portions of the Easement Area into some of the Residential Lots for the Residential Units if necessary to meet zoning requirements, permitting requirements, or other sound development and planning considerations.

c. Cornerstone shall, however, use its best efforts to design the Residential Lots in such a manner as to minimize the amount of the Easement Area incorporated into the Residential Lots. To the extent Cornerstone must incorporate portions of the Easement Area into the Residential Lots, Cornerstone must preserve the remaining portion of the Easement Area as a single contiguous parcel. Those remaining portions of the Easement Area which are, pursuant to subparagraphs (a), (b), and (c), not included within any residential lot shall be referred to hereinafter as the "Residual Area."

d. The parties acknowledge that the "Easement Area" shown on Exhibit A and which is the subject of this Agreement does not include certain portions of the Cornerstone Parcel which shall be incorporated into one or more Residential Lots and which, although constrained from development by certain regulatory restrictions, are not intended to be constrained by the terms of this Easement. Notwithstanding the foregoing, nothing in this Easement shall be deemed to remove such areas from any applicable regulatory constraints, and the City shall continue to have all powers ordinarily associated with the use and development of such areas.

e. In obtaining any mortgage loan financing for the Cornerstone Parcel or the development thereof, Cornerstone's agreements with any mortgagees shall provide that such mortgagee shall release the lien of its mortgage from the Residual Area once such area has been identified of record, so that the Residual Area shall be free of any liens or encumbrances.

f. Upon the later to occur of (i) the issuance of certificates of occupancy for eighty (80%) of the Residential Units to be constructed on Cornerstone Parcel or (ii) December 31, 2005, Cornerstone, at its expense, shall establish a series of permanent bounds and markers on the Residential Lots so as to mark clearly their division from the Residual Area.

g. Cornerstone shall complete its subdivision plan or plans, setting out which portions of the Easement Area will be incorporated in the Residential Lots, within ten (10) years of the date hereof.

2. Public Access Easement

a. Cornerstone hereby grants to City, with quitclaim covenants, the perpetual right and easement over and through the Easement Area for the following public purposes: (i) pedestrian and general recreational access, including access to other lands of the City (whether properties owned by the City in fee simple or with respect to which the City has similar easement rights) and (ii) general public recreational uses. The City shall have the right to limit and regulate the access and use by the public of the foregoing easement rights.

b. Cornerstone hereby grants to City the perpetual and exclusive right to plan, construct, and maintain at the City's sole cost and expense (except as set forth below) footpaths and trails within the Easement Area to allow pedestrian and general recreational access.

c. Cornerstone shall, upon the earlier of (i) substantial completion of construction of the Residential Units on the Residential Lots or (ii) sale of eighty percent (80%) of the Residential Units on the Residential Lots, transfer to City the sum of Seventy-Five Thousand (\$75,000.00) dollars to be applied by City to the cost of developing and maintaining said footpaths and trails.

d. Cornerstone reserves to itself, its successors and assigns, the rights to continue to enter upon and use the Easement Area, so long as such entrance and use do not interfere with the use by the City of the Easement Area as provided for herein and the rights granted to the City hereby. With respect to the foregoing reservation, the City specifically acknowledges that temporary entrances by Cornerstone and its authorized agents upon the Easement Area for construction and maintenance of the improvements upon the Cornerstone Parcel contemplated hereby shall be permitted hereunder so long as they do not materially interfere with the use and enjoyment of the Easement Area by the City for the purposes set forth in subparagraphs (a) and (b), above.

3. Conveyance of Residual Area

a. At such time and in such manner as shall be set forth below, Cornerstone shall convey the Residual Areas to the City in consideration of the sum of one dollar (\$1.00).

b. Cornerstone shall establish the date for the conveyance of the Residual Areas by giving written notice to the City at any time within six (6) months after Cornerstone shall have received approval for its development plans for the development of the Cornerstone Parcel. Cornerstone may delay the date for the notice if and to the extent additional time is required for the approval of the subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area.

c. Closing on the conveyance of the Residual Area shall occur within thirty (30) days of the date of the Cornerstone's notice to the City as set forth in subparagraph b, above. Cornerstone shall be responsible for having its engineers or surveyors prepare true and accurate metes and bounds description of the Residual Area and for preparing and submitting for all necessary approvals any subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area. Cornerstone shall convey the foregoing by good and sufficient quitclaim deed, free of all liens and encumbrances.

4. Run with the Land. The easement and other agreements created herein shall be construed in accordance with the laws of the Commonwealth of Massachusetts shall run with the land, and this instrument shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and all persons claiming by, through or under them.

5. Conservation Restrictions. Cornerstone shall deliver to the City a perpetual restriction agreement, in form and substance satisfactory to the City and its Conservation Commission and in conformance with chapter 184 section 32 of the Massachusetts General Laws, regarding the preservation of certain restrictions and covenants regarding the use and development of the Easement Area. Nothing in this Easement shall be deemed to supplant or supersede the foregoing conservation restriction; and the granting of the conservation restriction shall not be deemed to supplant or supersede and of the provisions of this Easement.

6. Respective Rights and Obligations.

a. Nothing herein shall be construed or interpreted to mean that Cornerstone, merely by the granting of the easements and rights set forth herein, has assumed any liability for any injury or damage resulting from the City's use of the Easement Area as provided herein.

b. The City shall be responsible for maintaining, in its sole discretion, the Easement Area in a manner consistent with the Easement Area's use for conservation and recreation purposes.

c. Cornerstone and the City shall each be responsible for their own compliance with all applicable laws in connection with the exercise by each of them of their respective rights with regard to the Easement Area.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Facsimiles or copies of this Agreement shall be deemed originals for all purposes.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this as an instrument under seal as of the date first above written.

KESSELER DEVELOPMENT, LLC

By: Cornerstone Manager, Inc.

By: [Signature]
Its
Duly Authorized

CITY OF NEWTON

By: [Signature]
David B. Cohen
Its Mayor
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF Suffolk) ss.
)

April 7th, 2004

On this day, before me, personally appeared the above-named Paul E. Troydas of Cornerstone Manager, Inc., the Manager of KESSELER DEVELOPMENT, LLC, and not individually, who acknowledged the foregoing instrument to be his/her free act and deed, in his/her capacity as aforesaid.

[Signature]
Notary Public
My Commission expires: 12.31.04

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF Middlesex) ss.
)

April 6, 2004

On this day, before me, personally appeared the above-named David B. Cohen, as Mayor of the City of Newton, and not individually, who acknowledged the foregoing instrument to be his free act and deed, in his capacity as aforesaid.

[Signature]
Notary Public
My Commission expires: APR. 23, 2004



[Signature]