STREET TREE PRESERVATION AND MAINTENANCE EASEMENT

Document Title

Document Number

0879520

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OZAUKEE COUNTY
REGISTER OF DEEDS
PORT WASHINGTON, WI
TXID: 60834

RECORDED ON
03/10/2008 02:10PM

REC FEE: 19.00
TRANS FEE: 0.00
PAGES: 5
EXEMPT #: 0

Recording Area

Name and Return Address

F. Patrick Matthews
Matthews Law Offices, S.C.
731 N. Jackson Street, #800
Milwaukee, WI 53202

$19.00

Parcel Identification Number (PIN)

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STREET TREE PRESERVATION AND
MAINTENANCE EASEMENT

This Street Tree Preservation and Maintenance Easement ("Agreement") is made and entered into as of__Sept. 5, 2007, by and between W. W. Lange L.L.C.,("Developer"), a Wisconsin limited liability corporation, and the City of Mequon("City").

WHEREAS, Developer is the current owner of certain real property situated in the City of Mequon, Ozaukee County Wisconsin, described in Exhibit A attached hereto and incorporated herein by reference (River Birch Place Condominium, or the "Property") and,

WHEREAS, Developer, as a condition of improving the above described Property, shall install street tree plantings in accordance with the street tree plan approved by the Mequon Planning Commission on May, 2006,(the "Street Tree Plan");and
WHEREAS, the approved Street Tree Plan requires that trees will be planted outside of the public road right-of-way as specifically depicted and detailed in the Street Tree Plan; and

WHEREAS, the parties hereto desire to clarify and define their rights and obligations with respect to the location and maintenance of the street trees located inside or outside of the public road right-of-way.

NOW, THEREFORE, in consideration of the approvals rendered by the City, including approval of the Street Tree Plan, the mutual covenants and the easements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Tree Preservation Easement. A perpetual easement over and across the Property to access the street trees which are located on the Property and outside the public road right-of-way for the sole purpose of planting, replanting, maintaining and preserving the street trees is hereby established. The total area, which is subject to the terms of this Agreement, is depicted by Exhibit A attached hereto and incorporated herein.

2. Repair and Maintenance.

2.1. For three (3) years following the date of the planting of the last of such trees, Developer, its successors, and assigns, shall be responsible for the perpetual care and maintenance or removal and replacement of all street trees depicted on the Street Tree Plan. Upon expiration of said three (3) years, the responsibility for maintaining such trees shall be assumed by River Birch Place Condominium Association.

2.2. Developer shall create or cause to be created an entity ("the River Birch Place Condominium Association") with a perpetual existence pursuant to Chapter 181 of the Statutes of the State of Wisconsin, for the express purpose, inter alia, of assuming all responsibility for the perpetual care and maintenance or removal and replacement of any street tree outside the public right of way. Subject to Section 4 below, if any street tree outside the public right-of-way is diseased, infested, damaged, dead or dying, the Developer or the River Birch Place Condominium Association (subject to Section 2.1 above) shall promptly remove such tree and replace it with a healthy tree that is sized and located in accordance with the Street Tree Plan, except that the species of replacement tree may be changed with the express approval of the City of Mequon Forester if he/she certified that the species to be replaced has an inordinate susceptibility to disease or pests.
Should the Developer or the River Birch Place Condominium Association fail to properly carry out their obligations for the care and maintenance or removal and replacement of any street tree outside the public right of way in the judgment of the City Forester, then the City of Mequon may undertake to do such work, and charge the same to the River Birch Place Condominium, and all of the common elements and Units thereof pursuant to §66.0627, Wis. Stats., including such charge as a lien and special tax on the property.

3. Right of Entry. The party responsible for maintaining street trees within the easement area shall have the right to enter the private property upon which street trees are located and that is subject to the easement to conduct reasonable and necessary maintenance. Additionally, the City of Mequon shall enjoy the right of entry in order to carry out inspections of street trees and otherwise engage in activities provided under Section 2 above, and make determinations provided in Section 4 below. The responsible party shall be required to repair and restore pre-existing landscaping located within or adjacent to the easement area.

4. Decision Making Rights. The City of Mequon Forester shall determine if a street tree located within the easement area requires replacement. The City Forester shall also approve the species and size of the replacement tree.

5. Assignment of Transfer. The rights and obligations granted, reserved, or imposed under this Agreement shall attach to and run with the land, and they shall be binding upon and inure to the benefit of the heirs, administrators, assignees, successors, or transferees of all the parties hereto.

6. Restraints. The owners of property subject to the preservation easement shall be allowed to install landscaping within the easement area in a manner that will not interfere with the health and visibility of the street trees, or prevent reasonable access for street tree maintenance.

7. Indemnification. Developer for the first three (3) years of plant maintenance responsibility agrees to indemnify and to hold the property owners subject to the easement harmless from and against any and all liability for personal injury or property damage to any person when such injury or damage shall result from, arise out of, or be attributable to Developer's use, repair, or maintenance of the street trees within the easement area.

8. Recording. This Agreement shall be prepared and executed in recordable form and shall be recorded in the Office of Register of Deeds for Ozaukee County, Wisconsin.

9. Termination. This Agreement may be terminated by mutual consent in writing of all the parties hereto.

10. Amendment. This agreement may be amended only by a written instrument executed by all parties hereto.

11. Notice. The responsible party shall give at least one (1) day notice to the owners of property subject to the easement if maintenance activities require travel across the easement and/or private property adjoining the easement, except in the case of an emergency in which no such notice shall be required. Such notice requirement shall not apply to the City of Mequon, its officers, employees and agents.

12. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin.

13. Entire Agreement. When duly signed and acknowledged, this Agreement shall be effective binding upon, and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 6 day of September,2007.

W. W. Lange L.L.C.

By: W. W. Lange
Waldemar Lange, President

STATE OF WISCONSIN)
) SS
OZAUKEE COUNTY)

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Personally came before me this 6 day of SEPT ,2007,the above-named person,Waldemar Lange,to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, Ozaukee County, Wisconsin
Gay-Anne L. Straub
My commission(expires) is permanent. 2/13/2011

GAY-ANNE L. STRAUB NOTARY PUBLIC STATE OF WISCONSIN

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _ day of ,2007.

CITY OF MEQUON

By: Christine Nuemberg, Mayor
By: Lee Szymborski, City Clerk

STATE OF WISCONSIN)

OZAUKEE COUNTY)

Personally came before me this 1 day of February,2008 ~~,2007~~,the above-named Christine Nuemberg, Mayor and Lee Szymborski, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Ozaukee County, Wisconsin
My commission (expires) ~~is permanent~~. 6.19.11

DEBRA E. HABERMAN NOTARY PUBLIC STATE OF WISCONSIN

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Notary Public, Ozaukee County, Wisconsin
My commission (expires) (is)

CITY OF MEQUON

By: By:
Christine Nuemberg, Mayor Lee Szymborski, Clerk

STATE OF WISCONSIN)
) SS
OZAUKEE COUNTY)

Personally came before me this 1 day of February, 2008, ~~2007~~, the above-named Christine Nuemberg, Mayor and Lee Szymborski, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Ozaukee County, Wisconsin
My commission (expires) ~~(is)~~ 6.19.11

DEBRA E. HABERMAN NOTARY PUBLIC STATE OF WISCONSIN

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