

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Legislative and Legal Affairs Committee

Date: May 15, 2018

Time: 5:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 MAY -9 P 1:26

04-02-2018 – **Order No. 18-1007223**: Communication from Assistant City Solicitor, Cynthia Panagore Griffin regarding Proposed Order to Accept Grant of Public Walking Trail Easement from Fairfield Marlborough Limited Partnership.

-Refer to Legislative and Legal Affairs Committee

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.



IN CITY COUNCIL

Marlborough, Mass., APRIL 2, 2018

ORDERED:

That the WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the perpetual walking trail easement shown on a plan entitled "Public Access Route Talia", dated November 28, 2017, be accepted as a municipal easement for passive recreational pedestrian use, as hereinafter described:

DESCRIPTION

The perpetual walking trail easement of up to six (6) feet in width in the location approximately shown as "Pedestrian Route" on the plan entitled "Public Access Route Talia", dated November 28, 2017 and attached here as Exhibit A to the deed of easement entitled "Public Walking Trail Easement", dated January 10, 2018, by and through which deed of easement said perpetual walking trail easement is granted by Fairfield Marlborough Limited Partnership to the City of Marlborough, said deed of easement and Exhibit A thereto to be recorded with the Middlesex County South Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

The perpetual walking trail easement of up to six (6) feet in width in the location approximately shown as "Pedestrian Route" on the plan entitled "Public Access Route Talia", dated November 28, 2017 and attached as Exhibit "A" to the deed of easement entitled "Public Walking Trail Easement", dated January 10, 2018, from Fairfield Marlborough Limited Partnership to the City of Marlborough, said deed of easement and Exhibit A thereto to be recorded with the Middlesex County South Registry of Deeds, be accepted as a municipal easement for passive recreational pedestrian use in the City of Marlborough.

Be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

ADOPTED

ORDER NO. 18-1007223



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

MAR 28 P 2:52

City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

March 29, 2018

Edward Clancy, President
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Proposed Order to Accept Grant of Public Walking Trail Easement from Fairfield
Marlborough Limited Partnership

Dear President Clancy and Members:

Enclosed herewith is a proposed order to accept a public walking trail easement from Fairfield Marlborough Limited Partnership. The easement would connect the Talia apartments on Ames Street with the walking trail at Apex Center. Attached to the proposed order is a copy of the signed deed of easement and Exhibit A thereto, being a plan which depicts the location of the easement.

The subject easement is granted pursuant to paragraph 20 of the Comprehensive Permit issued by the Zoning Board of Appeals (ZBA Case No. 1410-2012) to The Gutierrez Company, predecessor in interest to Fairfield Marlborough Limited Partnership. Conservation Officer Priscilla Ryder has asked the Legal Department to place the proposed deed of easement before the Council for its consideration and approval.

Thank you for your attention to this matter.

Very truly yours,

Cynthia Panagore Griffin
Assistant City Solicitor

Enclosure

cc: Priscilla Ryder, Conservation Commissioner
Zoning Board of Appeals

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the perpetual walking trail easement shown on a plan entitled "Public Access Route Talia", dated November 28, 2017, be accepted as a municipal easement for passive recreational pedestrian use, as hereinafter described:

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ADOPTED

In City Council
Order No. 18-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

PUBLIC WALKING TRAIL EASEMENT

FAIRFIELD MARLBOROUGH LIMITED PARTNERSHIP, a Delaware limited partnership, having an address of 7301 N. SH-161, Suite 260, Irving, TX 75039 ("Grantor"), for consideration of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, hereby grants to the CITY OF MARLBOROUGH, Massachusetts, having an address of 140 Main Street, Marlborough, MA 01752 ("Grantee"), with QUITCLAIM COVENANTS, a non-exclusive right and easement up to six (6) feet in width in the location approximately shown as "Pedestrian Route" (the "Easement Area") on the plan attached as Exhibit A entitled "Public Access Route Talia" dated 11/28/17, for passive recreational use of a walking trail / route within the Easement Area, on the terms and conditions set forth in this Easement, which shall be deemed to be reserved rights of Grantor, and which are hereby accepted and agreed to by Grantee by its recording of this Easement. The Easement is located on "Grantor's Land" being that certain property commonly known and numbered as 155 Ames Street, Marlborough, MA 01752, more particularly described in that certain Confirmatory Deed dated March 11, 2105 and recorded with Middlesex South Registry of Deeds in Book 65061, Page 181.

The purpose of said non-exclusive right and easement is to provide members of the general public with the passive recreational pedestrian use of said walking trail / route between the crosswalk over Ames Street at the driveway entrance to the apartment complex on Grantor's Land, and the connecting trails over abutting land to the north now or formerly of Arturo J. Gutierrez, John A. Cataldo and Arthur J. Gutierrez, Jr., Trustees of the Marlborough / Northborough Land Realty Trust, a Massachusetts nominee trust, created under Declaration of Trust dated October 12, 2000 and recorded with the Middlesex South Registry of Deeds in Book 31932, Page 433, as amended, which connecting trails are more particularly described in (a) that certain Walking Trail Easement dated April 30, 2014, 63556, Page 536, and (b) that certain Public Walking Trail Easement dated April 30, 2014 and recorded with said Registry in Book 63556, Page 554, and provide access to the signalized intersection of Northboro Road East and

Property address: 155 Ames Street, Marlborough, MA 01752

Boston Post Road (aka Route 20) in said Marlborough, Massachusetts (collectively, such trails on the abutting land are referred to as the "Connecting Trails").

The Grantor shall reasonably maintain the walking trail and the sidewalk and crosswalks within the Easement Area. Grantee acknowledges and agrees that in part the walking trail / route may be an unimproved woods trail or path and may have slopes or surfaces that are not compliant with applicable accessibility regulations or requirements, and that Grantor shall have no obligation to improve the walking trail / route to comply with the Americans with Disabilities Act, or any other applicable state, federal or local law, regulation, guidance or order concerning accessibility, and that any such compliance shall be the sole obligation of Grantee at Grantee's sole cost and expense, and subject to Grantor's right to review and approve any plans and specifications, and further subject to temporary construction easements with reasonable working hours, approved by Grantor, which approvals shall not be unreasonably withheld.

The use of the Easement Area by the general public shall be subject to reasonable rules and regulations established and modified from time to time by Grantor. Without limiting the generality of the foregoing, Grantee hereby acknowledges and agrees that such use by the general public shall be limited to the hours of dawn to dusk, that the Easement Area shall be used only for pedestrian travel and at the sole risk of users, that the Easement Area crosses land developed and used for multi-family housing, that Grantor has a reasonable interest in the safety, orderliness, and quiet enjoyment of the area by Grantor's tenants, employees, agents, contractors and its tenant's guests and invitees and, accordingly, that Grantor shall have the right at any time, and from time to time, to suspend public use of the Easement Area if the public use thereof gives rise to reasonable health, safety, welfare or aesthetic concerns by Grantor or persons claiming by, through or under Grantor (e.g., unleashed dogs, pet feces, litter, criminal activity, loud, disruptive or abusive behavior, trespass on other portions of the Grantor's property, or the like), and to terminate this Easement upon 30 days' written notice to Grantee, if Grantor has documented a pattern of misuse or abuse and, despite such warning and documentation, the pattern has continued or resumed.

Grantor and Grantee, with the review and approval of Grantor, shall each have the right to post reasonable way-finding signage along the walking trail / route, to post rules and regulations concerning usage, and to post signage warning of potentially hazardous conditions, and disclaiming liability, all at the sole cost and expense of the party posting the signage. Grantor shall have no obligation to remove snow or ice from the walking trail / route except for those portions located on paved sidewalks or road and, even then, only to the extent otherwise required by applicable law.

Notwithstanding any language to the contrary contained in this Easement, Grantor and Grantee shall have all the benefits and protections of the limitation on liability contained in Massachusetts General Laws Chapter 21, Section 17C, to the fullest extent provided therein.

Grantor reserves to itself and its successors and assigns: (i) the right to relocate, from time to time, at Grantor's sole cost and expense and without any right of approval by Grantee beyond approvals otherwise required under then applicable law, the Easement Area as may be necessary or desirable for Grantor's use, development and redevelopment of the Grantor's Land, provided that (a) Grantor notifies Grantee in writing in advance, which such notice shall contain a new description and plan, both to be prepared and recorded at Grantor's expense, and (b) the relocated Easement Area does not significantly lessen the utility of the Easement Area for the intended purpose, does not unreasonably increase the burdens on the use and enjoyment of the Easement Area by the members of the general public, and does not frustrate the purpose for which the Easement was created but rather continues substantially to provide the public with a passive, recreational, pedestrian connection as contemplated in this Easement; (ii) the right to use portions of the Easement Area from time to time for the purposes of providing access and egress to and from the Grantor's Land including, without limitation, for ways, drives, utilities, parking areas, loading and unloading construction, repairs, sidewalks, landscaping and amenities; and (iii) the right to use and to grant others the right to use the Easement Area for any and all other purposes that do not materially interfere with the use by the general public of the Easement Area for passive recreational pedestrian use.

The use by the general public of the Easement Area may be suspended from time to time for the duration of any (i) maintenance or repair work on the Grantor's Land and any improvement thereon including without limitation any work following storm events, fire and other casualty, and any demolition or reconstruction; (ii) any suspension in the use of the Connecting Trail whether arising from disuse, mis-use, storm or other damage, fire or fire hazard, or lack of proper maintenance or otherwise; or (iii) relocation of the Connecting Trail to a location where the Connecting Trail no longer connects to the Easement Area. In addition, the Grantor reserves the right to terminate this Easement by written notice to the Grantee and recording thereof with the Registry of Deeds, if the Connecting Trail is permanently closed or no longer provides access to a retail center on the northwesterly side of Boston Post Road, or if the Grantee establishes or obtains another path elsewhere making the same connection.

The rights and obligations established hereby shall run with Grantor's Land and shall be binding upon and insure to the benefit of Grantor and Grantee, and their respective successors and assigns in perpetuity. This Easement is in the nature of an easement in gross. This Easement may not be amended without written consent of the Grantor and the Grantee and any person then holding a mortgage on Grantor's Land.


For Grantor's title, see Confirmatory Deed recorded with said Registry in Book 65061, Page 181.

[The remainder of this page is intentionally blank.]

WITNESS our hands and seals as of this 10th day of January, 2018.

FAIRFIELD MARLBOROUGH LIMITED
PARTNERSHIP, a Delaware limited partnership

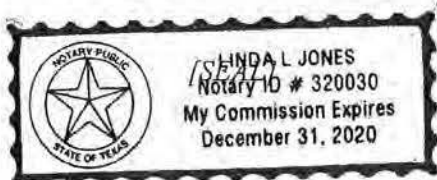
By: BF VAMF II GP LLC, a Delaware limited liability
company
its General Partner

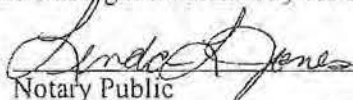
By: 
Name: Doug Ness
Title: Senior Vice President

State of Texas

County of Dallas, ss.

On this 10th day of January, 2018, personally appeared before me Doug Ness, as Senior Vice President on behalf of Fairfield Marlborough Limited Partnership, who proved to me through satisfactory evidence of identification, to wit, a driver's license, to be the signer of the foregoing document, and acknowledged to me that the same was signed voluntarily for its stated purpose.




Notary Public
My Commission expires: 12/31/2020

[Signatures continued on next page.]

Consented to:

Grantor's Mortgagee:
CAMBRIDGE SAVINGS BANK

By: *Paul C. Davis*
Name: Paul C. Davis
Title: Vice President

State of Mass
County of Middlesex, ss.

On this 24th day of January, 2018, personally appeared before me Paul C. Davis, as Vice President on behalf of Cambridge Savings Bank, who proved to me through satisfactory evidence of identification, to wit, a driver's license, to be the signer of the foregoing document, and acknowledged to me that the same was signed voluntarily for its stated purpose.

[SEAL]

Roshanda Bryant
Notary Public *Roshanda Bryant*
My Commission expires: September 30, 2022

