

No delinquent taxes

Transfer Entered

Oct 25, 2017 11:00 AM

Hennepin County, Minnesota
Mark Chapin
County Auditor and Treasurer



Doc No **T05485073**

Certified, filed and/or recorded on
Oct 25, 2017 11:00 AM

Office of the Registrar of Titles
Hennepin County, Minnesota
Martin McCormick, Registrar of Titles
Mark Chapin, County Auditor and Treasurer

Deputy 26

Pkg ID 1614980C

Attested Copy or Duplicate Original	\$2.00
Document Recording Fee	\$46.00
Multiple Certificates Affected Fee	\$20.00
<i>Document Total</i>	\$68.00

Existing Certs

1346482, 1346483

DRIVE AREA EASEMENT AGREEMENT

THIS DRIVE AREA EASEMENT AGREEMENT (this "Agreement") is made as of October 23, 2017, by Durkee-Atwood Lofts Owners' Association, a Minnesota non-profit corporation ("Durkee-Atwood"), and St. Anthony Northeast Condominium Association, a Minnesota non-profit corporation ("St. Anthony") (each a "Party" and collectively the "Parties").

RECITALS

- A. Durkee-Atwood and St. Anthony, or their predecessors, are Parties to an Easement Agreement dated as of June 10, 2003, recorded in the office of the Hennepin County Registrar of Titles on January 22, 2004, as Document No. 3909633 (the "Original Easement Agreement").
- B. The Original Easement Agreement was amended by a First Amendment to Easement Agreement dated as of June 22, 2011, recorded in the office of the Hennepin County Registrar of Titles on February 2, 2012, as Document No. T4924851 (the "First Amendment").
- C. By the terms of Article 2 of the Original Easement Agreement, Durkee-Atwood's predecessor in title, and St. Anthony's predecessor in title, granted parking easements on each Party's property to the other Party within an "Easement Area" identified on Exhibit C to the Original Easement Agreement.
- D. The "Easement Area" created by the Original Easement Agreement and depicted on Exhibit C thereto, consisted of ten (10) parking spaces on the property owned by St. Anthony, and nine (9) parking spaces located on the property owned by Durkee-Atwood. The property line that separates the St. Anthony property from the Durkee-Atwood property also defined the separation between the parking spaces in the Easement Area owned by St. Anthony, or by Durkee-Atwood, respectively.
- E. Section 3.2 of the Original Easement Agreement permitted Durkee-Atwood's predecessor in title to designate up to two (2) of the nine (9) spaces it owned in the Easement Area for the exclusive use of its residents, and permitted St. Anthony's predecessor in title to designate two (2) of the ten (10) spaces it owned in the Easement Area for the exclusive use of its residents.
- F. The First Amendment, among other things, amended the legal descriptions for each of the properties owned by the Parties, prohibited each Party from imposing parking restrictions in the Easement Area and addressed the Parties' operation and maintenance of improvements in the Easement Area.
- G. Durkee-Atwood and St. Anthony have now agreed to alter the use of the parking spaces in the "Easement Area" and to provide reciprocal easements in their parking lots for access to, and egress from, their "Designated Parking Spaces" as defined herein.

AGREEMENTS

NOW, THEREFORE, in consideration of these Recitals, and for other good and valuable consideration, Durkee-Atwood and St. Anthony agree as follows:

1. Recitals. The foregoing Recitals are agreed to be true and correct and are hereby incorporated into this Agreement by this reference.

2. Existing Driveway Easement. The existing driveway easement over the St. Anthony property in favor of the Durkee-Atwood as contained in the Declaration Creating Easements, Covenants, Conditions and Restrictions dated October 17, 1988, filed of record October 18, 1988, as Document No. 1967492, as depicted on Exhibit A attached hereto, is hereby confirmed and remains in full force and effect. This Agreement does not modify, alter or amend or change in any way the existing driveway easement.

3. Termination. The Original Easement Agreement and the First Amendment are hereby terminated by agreement of the Parties to the extent inconsistent with this Agreement.

4. Designation of Exclusive Parking Spaces. The Parties agree that the nine (9) spaces located on the Durkee-Atwood property immediately adjacent to the ten (10) parking spaces on the St. Anthony property as identified on Exhibit A attached hereto, are hereby reserved and designated for the exclusive use of Durkee-Atwood, its residents and visitors (the "Durkee-Atwood Designated Spaces"). Further, the Parties agree that the ten (10) parking spaces located on the St. Anthony property immediately adjacent to the nine (9) spaces on the Durkee-Atwood property as identified on Exhibit A attached hereto are hereby reserved and designated for the exclusive use of St. Anthony, its residents and guests (the "St. Anthony Designated Spaces"). Each Party agrees that neither it nor its residents will use or occupy the other Party's Designated Spaces as identified in Exhibit A attached hereto.

5. Reciprocal Drive Area Easement. In order to facilitate each Party's use and enjoyment of its Designated Parking Spaces, Durkee-Atwood grants to St. Anthony (and all persons claiming under St. Anthony, including its owners, tenants, guests and invitees), and St. Anthony grants to Durkee-Atwood (and all persons claiming under Durkee-Atwood, including its owners, tenants, guests and invitees), the following rights, easements and restrictions over, across and upon a portion of the common elements of Durkee-Atwood (legally described on Exhibit B), and over, across and upon a portion of the common elements of St. Anthony (legally described on Exhibit C):

- a. Driveways. Non-exclusive, appurtenant easements for reasonable reciprocal vehicular and pedestrian access to and from each Party's Designated Spaces across the driveway areas that are depicted on Exhibit A as originally constructed, located and maintained by each Party on its property for such use (the "Protected Driveways").
- b. No Obstruction. The Protected Driveways shall be subject to common use by the Parties and their respective owners, tenants, guests and invitees. The Protected Driveways shall be used in the normal and customary manner by the Parties, and neither Party will block, close, alter, change,

reconfigure or remove them without the Parties' mutual written consent, except for temporary periods to the limited extent required for repairs or maintenance and then only for limited periods in a manner reasonably designed to minimize interference.

6. No Impairment or Interference with Use. The Parties agree that the Durkee-Atwood Designated Spaces, the St. Anthony Designated Spaces, and the Protected Driveways are subject to the following provisions and regulations:

- a. Unless otherwise agreed in advance in writing, Durkee-Atwood may place signs entirely within the Durkee-Atwood Designated Spaces, and St. Anthony may place signs entirely within the St. Anthony Designated Spaces, to identify them as being reserved for the exclusive use of the Party and its residents, guests and invitees.
- b. Durkee-Atwood and St. Anthony agree that no permanent or temporary structures or obstacles will be erected on or in their respective Designated Spaces, or on or in the Protected Driveways, that would interfere with the use of the easements granted by this Agreement, or that would impair access to and full enjoyment of a Party's Designated Spaces and the Protected Driveways. Any signs erected within a Party's Designated Spaces shall not impede the removal of snow from the Designated Spaces of the other Party, and any snow caused to be placed on the other Party's Designated Spaces will be removed by the Party causing the snow accumulation promptly at such Party's sole expense.
- c. Each Party shall operate, maintain, repair and replace the pavement within its Designated Spaces and the portion of the Protected Driveways within its property in a smooth, clean, safe and reasonable state of repair and condition, including snow removal and reasonable resurfacing thereof, and in such a manner as may be reasonably necessary to allow each Party full use of its Designated Spaces and the Protected Driveways and the uninterrupted flow of pedestrian and vehicular ingress, egress and access.
- d. Each Party agrees to pay all taxes, charges, levies or assessments now or hereafter imposed on their respective properties including its Designated Spaces, and to operate its Designated Spaces in a secure, safe and reasonable manner. Each Party shall comply with all laws, legal and insurance requirements, now or hereafter applicable to its property and its Designated Spaces and the portion of the Protected Driveways on its property. Each shall be responsible to insure its own property and to maintain comprehensive general liability insurance with limits of at least \$2,000,000.00 in the aggregate, and at least \$1,000,000.00 per occurrence of personal injury or property damage. Each Party agrees to supply evidence that insurance with these coverage limits is in full force and effect at the reasonable request of the other Party.

7. Disputes. In the event that either Party contends that the other Party has violated any term of this Agreement, the Party that asserts such violation shall have its president contact the president of the other Party in an effort to resolve the dispute by cooperative communications. If such contact and communications are unsuccessful in resolving the dispute within seven (7) days that the dispute is initially raised, the Parties may, if they agree to seek a mediator's assistance, jointly request mediation of the dispute using the services of a mutually acceptable mediator or mediation service. If either Party declines to proceed with such a mediation, either Party may (a) propose to arbitrate the dispute, or (b) resort to such other remedies as may be available. If the Parties agree to arbitrate the dispute, either Party may initiate arbitration by serving a demand for arbitration upon the other Party. The arbitration shall be conducted before a single arbitrator selected by mutual agreement of the Parties or, if the Parties cannot agree, before an arbitrator selected from the Commercial Arbitration Panel of the American Arbitration Association. The dispute shall be heard by the arbitrator within thirty (30) days of the filing of the demand for arbitration unless the Parties otherwise agree. The decision of the arbitrator shall be final and binding upon the Parties and judgment upon the award may be entered in any court having jurisdiction. Nothing herein shall bar either Party, however, from declining to arbitrate the dispute and seeking a remedy in court, which may include applying for injunctive relief in the event that the other Party blocks or prevents access within the Protected Driveways to the other Party's property and its Designated Spaces. The costs of any such proceeding, including reasonable attorneys' fees of the prevailing Party, shall be paid by the Party not prevailing. Any delay in realizing, or failure to realize, and any remedy herein for a default or a dispute hereunder, shall not be deemed a waiver of that default or dispute or any subsequent default or dispute of a similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the Party against whom the waiver is claimed.

8. Binding Effect. The Parties agree that the covenants, restrictions and reservations set forth in this Agreement shall be binding on the Parties having any right, title or interest in the properties subject hereto, together with their heirs, successors and assigns, and shall inure to the benefit of each of such other Parties. Nothing herein is or shall be deemed to be a gift or dedication of any portion of either Party's property to the general public, and either Party may make such temporary closures as may be reasonably necessary to avoid creation of any public rights.

9. Notices. Any notice from a Party to the other Party shall be in writing and shall be given by registered or certified mail addressed as follows:

If to Durkee-Atwood: Durkee-Atwood Lofts Owners' Association
215 - 7th Street Northeast
Minneapolis, Minnesota 55413
Attn: President

If to St. Anthony: St. Anthony Northeast
Condominium Association
720 Third Avenue NE
Minneapolis, Minnesota 55413
Attn: President

or to such other address as the Party to receive notice may designate in writing to the other Party by notice given as herein required. Any notice shall be deemed to have been given on the date received as evidenced by the customary registered or certified mail receipt.

10. Amendment or Modification. This Agreement and any of the rights, licenses and easements created hereby may be terminated or amended by an instrument duly executed by the Parties hereto provided that such amendment is duly recorded with the Hennepin County real estate records.

11. Governing Law. This Agreement shall be governed by and construed under the laws of the state of Minnesota.

*[Remainder of page intentionally left blank;
signature page to follow]*

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be made as of the day and year first above written.

DURKEE-ATWOOD:

**DURKEE-ATWOOD LOFTS
OWNERS' ASSOCIATION**

By: *Amy Lynn Eggers*
Name: Amy Lynn Eggers
Title: President

STATE OF MINNESOTA)
) ss.
COUNTY OF Wanabein)

The foregoing instrument was acknowledged before me this 23 day of October, 2017, by Amy Lynn Eggers, the President of Durkee-Atwood Lofts Owners' Association, a Minnesota non-profit corporation, on behalf of said entity.



Jacqueline K. Otto
Notary Public

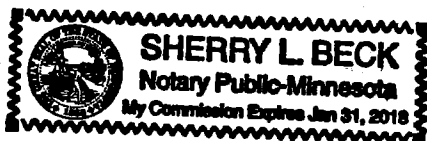
ST. ANTHONY:

**ST. ANTHONY NORTHEAST
CONDOMINIUM ASSOCIATION**

By: *Jason Gerhardt*
Name: Jason Gerhardt
Title: President

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 23rd day of October, 2017, by Jason Gerhardt, the President of St. Anthony Northeast Condominium Association, a Minnesota non-profit corporation, on behalf of said entity.



Sherry L. Beck
Notary Public

EXHIBIT A

EXISTING DRIVEWAY EASEMENT, DESIGNATED PARKING SPACES AND PROTECTED DRIVEWAYS

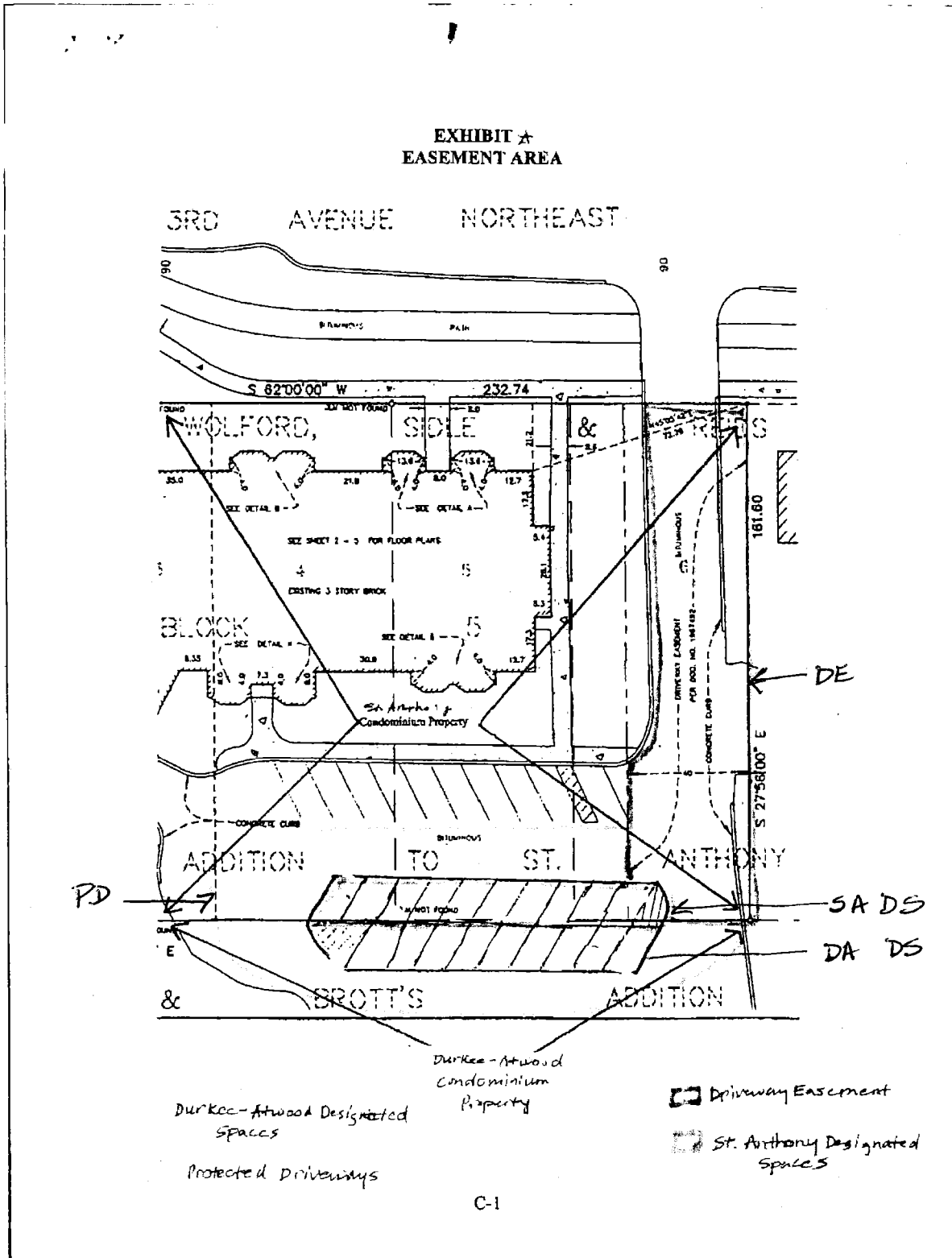


EXHIBIT B

PROTECTED DRIVEWAY ON THE DURKEE-ATWOOD PROPERTY

That portion of the Common Elements of the Durkee-Atwood Lofts contained within the parking lot thereof, CIC No. 1777, Hennepin County, Minnesota, depicted on Exhibit A hereto.

EXHIBIT C

PROTECTED DRIVEWAY ON THE ST. ANTHONY PROPERTY

That portion of the Common Elements of the St. Anthony Northeast Condominium contained within the parking lot thereof, CIC No. 1155, Hennepin County, Minnesota, depicted on Exhibit A hereto.