



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of December 08, 2012**

**DATE:** November 29, 2012

**SUBJECT:** Consent to the grant by Buchanan Gardens Limited Partnership, a Virginia limited partnership, to 910, LLC, a Maryland limited liability company, the rights as contained in that certain Deed of Easement, and Approve the Subordination of the lien of that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated April 25, 2011, to that certain Deed of Easement between Buchanan Gardens Limited Partnership and 910, LLC, on Property Known as Lots "B" and "C", Block "H", Park Barcroft, Property of C.J. Arnett, Arlington, Virginia (RPC #23006002, 23006161)

**C. M. RECOMMENDATION:**

1. Consent to the attached Deed of Easement between Buchanan Gardens Limited Partnership (BGLP), a Virginia limited partnership and 910, LLC (910), a Maryland limited liability company, on certain real property known as Lots "B" and "C", Block "H", Park Barcroft, Property of C.J. Arnett, Arlington, Virginia (RPC #23006002, 23006161);
2. Authorize subordination of the lien of that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated April 25, 2011, by and between BGLP, as grantor, the County Board, as beneficiary and grantee, and Louise DiMatteo and Julie Massie, as trustees, to the attached Deed of Easement;
3. Appoint Carol McCoskrie as a substitute Trustee to replace Louise DiMatteo, and authorize the County Manager, or her designee, to execute an Appointment of Substitute Trustee, subject to approval as to form by the County Attorney;
4. Authorize the County Manager, or her designee, to execute the attached Consent and Subordination of Lender, consenting to the Deed of Easement between BGLP and 910 and subordinating the lien of the Deed of Trust, subject to approval of all such documents as to form by the County Attorney;

County Manager:

County Attorney:

Staff: Marie Randall, CPHD, Housing

5. Authorize Carol McCoskrie and/or Julie Massie, Trustees, to execute the Consent and Subordination of Lender, consenting to the Deed of Easement between BGLP and 910 and subordinating the lien of the Deed of Trust, subject to approval of the Consent and Subordination of Lender as to form by the County Attorney; and

**ISSUES:** This is a request for consent and subordination of a Deed of Easement on property on which the County is a lien holder under a Deed of Trust. There are no outstanding issues.

**SUMMARY:** In order for BGLP, the developer and owner, to receive an equity installment planned for December, to partially payoff the construction debt, the investor has required that the County consent to and subordinate to the attached Deed of Easement.

**BACKGROUND:** During the early stages of site work performed at Buchanan Gardens Apartment last year, BGLP discovered that a sewer line for the adjacent neighbor's (910, LLC) property ran through the Buchanan Gardens Apartments property. Since BGLP had purchased Buchanan Gardens from the same neighbor, the shared sewer line was installed when both sites were owned by the same owner.

When BGLP first discovered the sewer line running through its property, 910, LLC was told that at some point during the construction period, the line would have to be removed and re-routed off the Buchanan Gardens Apartments property. However, as construction progressed over the next several months, both BGLP and 910, LLC agreed to maintain the sewer line in place, which generated substantial savings for both property owners.

However, because the properties share the same sewer line, an easement agreement between the neighboring property and Buchanan Gardens Apartments, allowing for the sewer line to remain in place, has been approved by BGLP and 910, LLC.

**DISCUSSION:** The Deed of Trust securing Arlington County, recorded on April 26, 2011, in Deed Book 4456 at Page 300, appointed Louise DiMatteo or Julie Massie, either of whom may act, as Trustees. The County Board is being requested to appoint Carol McCoskrie as substitute Trustee to replace Louise DiMatteo, and to authorize the Trustee(s) to subordinate the lien of the Deed of Trust to the easement between BGLP and 910, LLC. Upon subordination of the Deed of Trust, any foreclosure or sale under the power of sale pursuant to the Deed of Trust by the County would be subject and subordinate to the rights of BGLP and 910, LLC and their successors and successors-in-title under the Deed of Easement. It is not anticipated that the existence of the easement will materially detract from the value of the secured property under the Deed of Trust.

**FISCAL IMPACT:** None.

Prepared by and return to:  
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2200 Clarendon Blvd., Suite 1300  
Arlington, VA 22201

**RPC Nos.: 23006002, 23006161 and 23006003**

## **DEED OF EASEMENT**

THIS DEED OF EASEMENT ("Deed") is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and among **BUCHANAN GARDENS LIMITED PARTNERSHIP**, a Virginia limited partnership, its successors and assigns, Grantor/Grantee (hereinafter "Owner"); and **910, LLC**, a Maryland limited liability company, its successors and assigns, Grantor/Grantee (hereinafter, the "910").

### **RECITALS**

- R-1. The Owner is the sole owner of certain parcels or tracts of real property, described as RPC #23006002 (Lot B, Block H, Park Barcroft) and RPC #23006161 (Lot C, Block H, Park Barcroft), situate and located in Arlington County, Virginia by virtue of that certain deed recorded in Deed Book 4456 at Page 231 (the "Property"), among the land records of Arlington County, Virginia (the "Land Records"); and
- R-2. 910 is the sole owner of a certain parcel or tract of real property adjacent to the Property, described as RPC #23006003 (Lot 5, Block H, Barcroft), situate and located in Arlington County, Virginia, by virtue of that certain deed recorded in Deed Book 4057 at Page 1541 (the "910 Property"), among the Land Records; and
- R-3. The Owner desires to create, dedicate, grant and convey a private sanitary sewer lateral easement, as hereinafter set forth, described and shown on a plat entitled, "Plat Showing Private Sanitary Sewer Lateral Easement on Lot C Property of C.J. Arnett Deed Book 883, Page 194 Arlington County, Virginia," prepared by Bowman Consulting Group, Ltd., dated July 6, 2012 (the "Plat"), attached hereto and made a part hereof.
- R-4. The Owner and 910 desire to set forth herein their agreements, undertakings, liabilities and obligations pertaining to the private sanitary sewer lateral easement, and matters related thereto and such other matters as are set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein as if fully set forth hereafter.

2. Easement. The Owner does hereby dedicate and create a private sanitary sewer lateral easement ("Easement") in the location set forth on the Plat described as "10' Private Sanitary Sewer Lateral Easement (Hereby Granted)," for the benefit of the 910 Property.

3. Terms and Conditions. The Easement is subject to the following terms and conditions.

(a) 910 shall keep the Easement and any property installed within the Easement in good condition and repair. 910 shall have the right of entry upon the easement area to construct, maintain and repair the lateral, and all the rights reasonably necessary for the exercise of these easement rights, including the right of reasonable access to the easement area and the right to use adjoining land where necessary (which right shall be exercised only during periods of actual construction or maintenance). 910 shall restore, as nearly as possible, the premises to their original condition, such restoration to include the backfilling of trenches, the reseeding or resodding of lawns, and replacement of shrubbery and fences, but not permanent structures or trees. Permanent structures, such as trees growing in the Easement area and/or manmade structures placed by Owner and/or residents living on Owner's property, will be removed by 910, but expenses incurred by 910 to remove these structures will be reimbursed to 910 by Owner.

(b) 910, as the owner of 910 Property, their heirs, successors and assigns, shall have full and free use of the Easement for the purposes named and shall have all rights and privileges reasonably necessary to the enjoyment and exercise of the Easement, and further shall have the obligation of all repairs and maintenance to the improvements in the easement area.

(c) 910, their heirs, successors and assigns ("Indemnitor") shall hold harmless and indemnify the Owner, their heirs, successors and assigns from and against all claims asserted against the Owner, their heirs, successors and assigns ("Indemnitees"), including all costs and attorneys' fees, arising from or related to the granting of the Easement and/or the use or repair of the Easement, or the existence of Indemnitor's property within the Easement.

(d) The Owner, their heirs, successors and assigns shall not be liable for any claim, damage or injury to 910, their heirs, successors and assigns, invitees, and licenses arising from or related to the use of the Easement.

(e) The Easement shall be subject to all covenants, conditions, restrictions and other easements of record that encumber the Easement Area as of the date of recordation of this Deed.

(f) 910 shall provide insurance coverage for the Easement Area under its commercial insurance policy for the 910 Property.

4. Merger. This Deed contains the final and entire agreement between the parties hereto with respect to the subject matter hereof and they shall not be bound by

any agreements, liens, conditions, statement or representations oral or written relating to the subject matter hereof not contained herein. Any subsequent amendment to this Deed shall be valid only if executed in writing by the parties hereto their heirs, successors and assigns and recorded among the land records of Arlington County, Virginia.

5. Governing Law. This Deed shall be construed and governed in accordance with the laws of Commonwealth of Virginia.

6. Covenant Running With the Land. The promises, agreements and covenants stated in this Deed are not personal, but are covenants running with the land.

IN WITNESS WHEREOF, the Owner and 910 hereto have caused this Deed to be executed as of the day and year first above written.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

WITNESS the following signatures and seals:

**BUCHANAN GARDENS LIMITED PARTNERSHIP**, a Virginia limited partnership

By: Buchanan Gardens Development Corporation, a Virginia corporation, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ of Buchanan Gardens Development Corporation, General Partner of BUCHANAN GARDENS LIMITED PARTNERSHIP.

\_\_\_\_\_  
Notary Public

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

Notary Registration Number: \_\_\_\_\_

**910, LLC**, a Maryland limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Managing Member

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ : to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, Managing Member of 910, LLC.

\_\_\_\_\_  
Notary Public

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

**CONSENT AND SUBORDINATION OF LENDER**

In consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration in hand paid to the undersigned, the receipt and sufficiency of which being hereby acknowledged, the undersigned, as Beneficiary and Trustee of that certain Deed of Trust from Buchanan Gardens Limited Partnership to \_\_\_\_\_ TRUSTEE ("Trustee") securing \_\_\_\_\_ ("Beneficiary") dated \_\_\_\_\_, and recorded in Deed Book \_\_\_\_\_ at page \_\_\_\_\_, in Arlington County Virginia land records, (i) does hereby consent to the grant by Buchanan Gardens Limited Partnership to 910, LLC, the rights as contained in the foregoing Deed of Easement, and (ii) does hereby agree that any foreclosure or sale under power of sale pursuant to said Deed of Trust shall be subject and subordinate to the rights of the parties and their successors and successors-in-title under the Deed of Easement. This Consent and Subordination may be signed in any number of counterparts.

This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BENEFICIARY:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ : to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

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

Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
TRUSTEE

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ : to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, TRUSTEE.

\_\_\_\_\_  
Notary Public

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

Notary Registration Number: \_\_\_\_\_

\_\_\_\_\_  
TRUSTEE

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ : to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, TRUSTEE.

\_\_\_\_\_  
Notary Public

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

Notary Registration Number: \_\_\_\_\_