

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

CAUSE NO. 53C06-2108-PL-001640

POWDER MONKEY LLC,
 Plaintiff,

vs.

UNIVERSITY PROPERTIES III LLC,
 Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
DAMAGES AND INJUNCTIVE RELIEF**

Come now Plaintiff, Powder Monkey LLC, by counsel, CARMINPARKER, PC, and for its cause of action against Defendant University Properties III LLC, alleges and states:

The Parties

1. Plaintiff Powder Monkey LLC (hereinafter “Powder Monkey”) owns an apartment building in the City of Bloomington with an address of 308 E 20th St, Bloomington, Indiana 47408-1577 (hereinafter “Apartment Property”). A true and accurate copy of the Powder Monkey Deed recorded with the Monroe County Recorder as Instrument Number 2012021629 is attached hereto as **Exhibit 1**.

2. Defendant University Properties III LLC, a Delaware Limited Liability Company, (hereinafter “University Properties”) owns an apartment building and a private parking lot in the City of Bloomington with addresses of 301 E 19th St and 305 E 19th St, Bloomington, Indiana 47408-1572 (hereinafter “Parking Lot Property”). A copy of the Monroe County GIS information showing University Properties ownership is attached hereto as **Exhibit 2**.

3. University Properties maintains a principal office address of 2015 N Dunn Street, Bloomington, Indiana, 47408.

Jurisdiction and Venue

4. This Court has jurisdiction over this action.

5. Venue is proper in this Court because University Properties' principal office is in Monroe County, Indiana; and the land is located in Monroe County, Indiana.

Background Facts

6. On or about January 27, 1986, James E. Burks ("Burks") became the owner of the Apartment Property and Parking Lot Property by virtue of a Warranty Deed from James M. Wallace. A true and accurate copy of the Warranty Deed recorded with the Monroe County Recorder at Book 322, Page 96 is attached hereto as **Exhibit 3**.

7. Burks agreed to sell the Parking Lot Property to Golfing Greek Partnership ("Greek") if and only if Greek granted a parking easement for the use and benefit of the Apartment Property.

8. On or about December 22, 1988, Greek became the owner of the Parking Lot Property by virtue of a Warranty Deed from Burks. A true and accurate copy of the Warranty Deed recorded with the Monroe County Recorder at Book 355, Page 182 is attached hereto as **Exhibit 4**.

9. On or about December 22, 1988, Burks and Greek entered into an Easement Agreement for Ingress and Egress and For Parking (hereinafter "Parking Easement"). A true and accurate copy of the Parking Easement recorded with the Monroe County Recorder at Book 355, Page 183 is attached hereto as **Exhibit 5**. The Parking Easement encumbers Lots 95 and 96, Miller Courts Addition.

10. The Parking Easement was intended to be permanent and benefits the Apartment Building Property by providing fifteen (15) parking spaces on the Parking Lot Property.

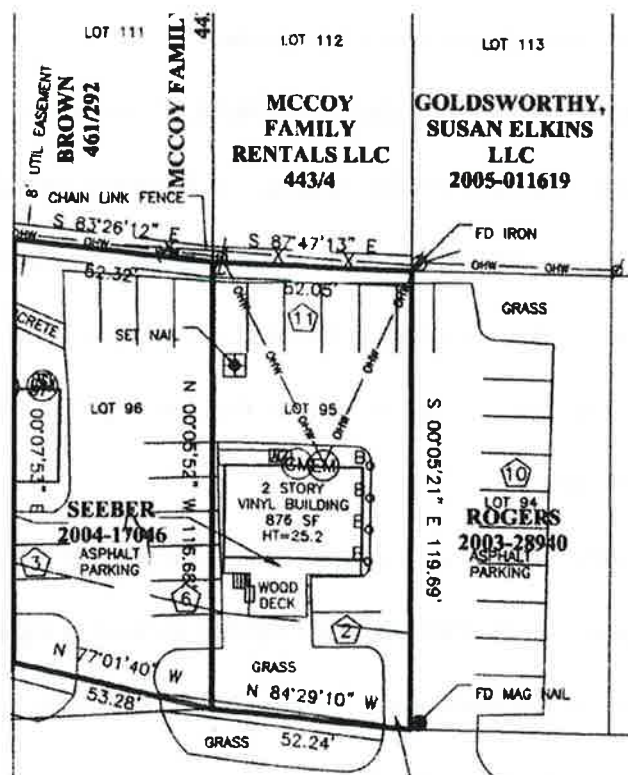
11. Burks and his successors in interest to the apartment property have the right to use 15 parking spaces situated on the Parking Lot Property in accordance with the terms of the Parking Easement.

12. Greek and its successors in interest are obligated to maintain the parking spaces and the access to the Parking Lot Property in accordance with the terms of the Parking Easement.

13. The Parking Easement includes a permanent, non-exclusive easement for ingress and egress over and across the Parking Lot Property to access the parking spaces.

14. On or about August 4, 2007, Varsity Villas caused a survey to be performed (hereinafter "Survey"). A true and accurate copy of the Survey recorded with the Monroe County Recorder at Book 355, Page 183 is attached hereto as **Exhibit 6**.

15. The Survey depicts parking spaces on lots 95 and 96, which are identified with a pentagon:



Extracted from **Exhibit 6**.

16. Each pentagon marker on the survey denotes the number of parking spaces in the vicinity of the pentagon.

17. The Survey identifies and plots the Parking Easement.

18. On or about August 10, 2007, Varsity Villas Investment Group LLC (“Varsity Villas”) became the owner of the Parking Lot Property subject to the Parking Easement, by virtue of a Warranty Deed from Seeber and King. A true and accurate copy of the Varsity Villas Deed recorded with the Monroe County Recorder as Instrument Number 2007014891 is attached hereto as **Exhibit 7**.

19. Subsequent to the foregoing transactions, Powder Monkey became the owner of the Apartment Property and University Properties became the owner of the Parking Lot Property.

20. University Properties is obligated to maintain and provide no fewer than fifteen (15) parking spaces on the Parking Lot Property for the benefit of the Powder Monkey Property and to provide ingress and egress for access for the same.

21. In the week preceding this Complaint, University Properties commenced development and construction activity on the Parking Lot Property, including:

- a. Utilizing heavy construction equipment to demolish all the parking spaces on the Parking Lot Property, including the removal of pavement.
- b. Blocking and barricading access to the Parking Lot Property by installing a construction fence.
- c. Initiating construction of a project that will provide no more than thirteen (13) parking spaces on the Parking Lot Property located in a garage yet to be built.
- d. Destruction of the permanent, non-exclusive easement for ingress and egress to the driveway and parking area.

22. Powder Monkey did not consent to University Properties' destruction of the parking lot and removal of the parking spaces.

23. Each and all of the development and construction activities by University Properties is a breach of the Easement Agreement by blocking Powder Monkey's access to the parking spaces and depriving Powder Monkey of the use and benefit of the Parking Easement.

24. University Properties is in breach of the Easement Agreement by failing and refusing to maintain the entire, larger parking area.

25. Powder Monkey is entitled to enforce the Easement Agreement against University Properties, seek injunctive relief, and recover damages for any injuries or losses resulting from any breach thereof.

26. Powder Monkey has suffered damages and will continue to suffer damages until changes are made to the Parking Lot Property to restore the Parking Easement.

COUNT I

Declaratory Judgment

27. Powder Monkey incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

28. There is an active dispute between the parties regarding University Properties' right to obstruct the Parking Lot Property and eliminate access to fifteen (15) parking spaces.

29. University Properties violated the Easement Agreement as set forth above.

30. University Properties is contractually obligated to maintain the entire, larger parking area as intended by the Parking Easement and to repair any damage to the same.

31. The demolition of the Parking Lot Property has damaged the Parking Easement and deprives Powder Monkey of the use and benefit of the Parking Easement.

32. No right has ever been established that allows the University Properties to remove the parking lot and prevent Powder Monkey's use of fifteen (15) parking spaces.

33. University Properties' breach of the Easement Agreement has caused damage to Powder Monkey and the continuation of such will cause Powder Monkey to incur additional damages and costs related thereto.

34. Powder Monkey is entitled to a declaratory judgment setting forth the rights and obligations of the parties under the Easement Agreement.

35. Powder Monkey requests that the Court enter a declaratory judgment setting forth the rights and obligations of the parties under the Easement Agreement declaring that:

- a. The Easement Agreement is valid and enforceable against University Properties and the parking lot property.
- b. The Easement Agreement is a contract and a restrictive covenant affecting the Parking Lot Property.
- c. University Properties shall keep fifteen (15) parking spaces continuously unobstructed and in good repair and open and available for the use and benefit of the apartment property.
- d. University Properties has failed to keep the parking spaces on the Parking Lot Property continuously unobstructed and in good repair.
- e. University Properties is liable for the cost of restoring the parking spaces in the Parking Easement.
- f. University Properties' destruction and removal of the parking spaces was intentional.

g. University Properties wrongfully altered the Parking Lot Property without notice to Powder Monkey and without legal authority.

h. University Properties is liable for all damages incurred by Powder Monkey.

WHEREFORE, Plaintiff requests the Court to enter declaratory judgment in its favor, as set forth in paragraph 35, and for all other just and proper relief.

COUNT II

Injunctive Relief

36. Powder Monkey incorporates by reference paragraphs 1 through 35 as if fully set forth herein.

37. University Properties has demolished the parking spaces used by Powder Monkey and representatives, tenants, invitees, and guests.

38. University Properties should be enjoined from further obstructing Powder Monkey's access to the Parking Lot Property and the fifteen (15) parking spaces.

39. University Properties should be compelled to re-establish access to fifteen (15) parking spaces on the Parking Lot Property.

40. University Properties should be compelled to restore the Parking Easement to its intended condition.

41. Unless enjoined, University Properties will continue its development and construction activities which interfere with and which deny Powder Monkey's right to use of the Parking Easement.

42. Powder Monkey is entitled to an Order requiring University Properties and its successors to keep and maintain the Parking Easement on the Parking Lot Property continuously unobstructed and in good repair.

43. Powder Monkey requests that the Court enter an order enjoining University Properties to perform their duties under the Easement Agreement ordering that:

- a. University Properties shall not interfere with and deny Powder Monkey's right of access to and use of fifteen (15) parking spaces on the Parking Lot Property.
- b. University Properties shall not interfere with or obstruct Powder Monkey's occupancy, possession and use of the Parking Easement.
- c. University Properties shall make all necessary changes to the Parking Lot Property to restore the parking easement.
- d. University Properties shall keep the parking spaces on the Parking Lot Property continuously unobstructed and in good repair.
- e. University Properties shall repair the damage it caused to the Parking Easement.
- f. University Properties shall not place any fence or block access to the Parking Lot Property.

WHEREFORE, Plaintiff request the Court to enter an injunction in its favor, as set forth in paragraph 43, and for all other just and proper relief.

COUNT III

Damages

44. Powder Monkey incorporates by reference paragraphs 1 through 43 as if fully set forth herein.

45. Powder Monkey and University Properties have entered into the Easement Agreement by owning lots that are bound by the same.

46. University Properties' conduct, as alleged herein, is a breach of contract and a breach of the Parking Easement.

47. University Properties has failed to cure its breaches.

48. University Properties' breaches of the Easement Agreement have caused the Plaintiffs to suffer damages.

49. Powder Monkey is entitled to a judgment against University Properties for damages including injuries and losses from any breaches of the Easement Agreement.

WHEREFORE, Plaintiff requests the Court to enter a judgment against the Defendant for breach of contract and breach of restrictive covenants and for damages, and for all other just and proper relief.

Respectfully submitted,

CARMINPARKER, PC

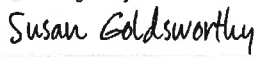
/s/ Michael L. Carmin

Michael L. Carmin, #12331-53

Daniel M. Cyr, #32555-53

Attorneys for Plaintiff

I swear or affirm under the penalties for perjury that the above and forgoing facts and representations are true and accurate this 4th day of August, 2021.

DocuSigned by:

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Susan Goldsworthy

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