

CONSENT 11/28/05

11/28 (13)

Don Johnson

From: Daniel C. Hill [dhill@AndersonKreiger.com]
Sent: Tuesday, November 22, 2005 4:49 PM
To: Anne Forbes; Sorli@aol.com; b-choate@rcn.com
Cc: Don Johnson; John Murray; Stephen Anderson
Subject: Acton/CPA - Jones Tavern

NOTE TO BOS - 11/22/05
WE HAD THIS ON YOUR LAST
CONSENT AGENDA BUT FAILED
TO RECEIVE THE FINAL AGREEMENT
UNTIL TODAY. WE ARE PLACING
IT BACK IN FRONT OF YOU TO KEEP
THE RECORD STRAIGHT.

Tom

Anne:

Please find attached a clean, final draft of the Preservation Restriction for execution by the Iron Work Farm. Please ensure that the document is dated and notarized, as well as signed, on page 7. Please return the executed Restriction to me, and I will record the instrument at the Registry of Deeds. Upon recording, I will provide you with a copy of the fully-executed Restriction.

By copy of this email I am asking the Town Manager to arrange for the Board of Selectmen to execute this Restriction at the Board's next meeting, and to return the executed Restriction to me.

Thank you for your cooperation.

-Dan

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-----Original Message-----

From: Anne Forbes [mailto:aforbes@rcn.com]
Sent: Wednesday, November 09, 2005 1:50 PM
To: Daniel C. Hill
Subject: Fw: Revised Iron Work Farm preservation restriction agreement

Dear Dan--

Thanks so much for clarifying some things for us by phone the other day.

Last night members of the IWF Board of Directors met to review the revised draft of the preservation restriction agreement with the Town that you emailed to us on 11/1 (draft #3, with your red-lined comments).

11/22/2005

In addition to the elimination of the mortgagee-subordination page, which you and I have discussed, we have only two corrections to request. Both appear to be typos:

Section 8, paragraph 2: In the sentence beginning "in such event . . ." the words "and paragraph 21 hereof" should be deleted, since there is no longer a paragraph with that number.

Section 13, paragraph 1, second sentence: The beginning of the sentence should read "The Town . . ." rather than "Grantor." This change reflects the prior conversations we have had with the CPC and town staff, as well as our phone discussion on Monday as to how MHC staff will be contacted, and by whom. As you know, we fully expect that MHC will ask for additional paragraphs to be added to the agreement as amendments, and that they are likely to ask for additional attachments, as well. We should be able to review any changes they request and to provide any additional attachment material as fast as is practicable.

We see no need for changes to the revised Restriction Guidelines that you also attached to your 11/1 email.

We'll look forward to your emailing a clean copy of both documents as soon as possible. If we can receive them within the next few days, Larry Sorli should be able to sign them and have them notarized in time for the Selectmen's meeting on 11/14, if one is scheduled for that night. Please send them both to my email address, and to Sorli@aol.com and b-choate@rcn.com.

Thanks so much.

Anne

PRESERVATION RESTRICTION AGREEMENT

between

THE TOWN OF ACTON

and

IRON WORK FARM IN ACTON, INC.

THIS PRESERVATION RESTRICTION is made this ____ day of _____, 2005, by and between IRON WORK FARM IN ACTON, INC., a nonprofit Massachusetts corporation maintaining its place of business at 128 Main Street, P.O. Box 1111, Acton, Massachusetts 01720 ("Grantor") and THE TOWN OF ACTON, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen (the "Town").

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of a certain parcel of real property located at 128 Main Street in the Town of Acton, Middlesex County, Massachusetts (hereinafter "the Premises"), and described in Exhibit A attached hereto and incorporated herein, as well as on a deed dated December 31, 1964, from Joseph A. Barker and Gerald Howell to the Grantor recorded with the Middlesex South District Registry of Deeds, Book 10725, Page 285, said Premises including one building known as Jones Tavern (the "Building").

WHEREAS, the Building is listed or eligible for listing on the National and State Registers of Historic Places.

WHEREAS, Town is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town and is authorized to accept and hold preservation restrictions as defined under the Massachusetts General Laws, Chapter 184, Section 31 (the "Act").

WHEREAS, the Town has provided the Grantor with a grant of monies under the Community Preservation Act, G.L. c. 44B, §§ 1-17 for the restoration of historic elements within the Building.

WHEREAS, Grantor desires to grant to the Town, and the Town desires to accept a preservation restriction on the Premises.

NOW, THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Town this preservation restriction (hereinafter "the Restriction"), which shall apply in perpetuity to the Premises.

1. Purpose: It is the purpose of this Restriction to protect the public investment in the restoration of the historically significant Building by ensuring that the exterior architectural, historic, and cultural features of the Building will be retained and maintained forever substantially in their current condition for preservation purposes, and

to prevent any use or change to the exterior of the Building that will significantly impair or interfere with the Building's preservation values.

2.1 Grantor's Covenants: Covenant to Maintain. Grantor agrees at all times to maintain the Building in sound structural condition and good state of repair in accordance with the policies and procedures of the Acton Historic District Commission and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Historic District Commission Guidelines and the Secretary's Standards"). The Town does not assume any obligation for maintaining, repairing or administering the Premises.

2.2. Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden: the Building shall not be moved, demolished, removed or razed except as described in paragraphs 7 and 8;

3.1 Conditional Rights Requiring Approval by Town. Grantor shall not undertake any of the following actions without prior express written approval of the Town, which approval may be withheld or conditioned in the sole discretion of the Town: increase or decrease the height of, make additions to, change the exterior construction materials of, or move, improve, alter, reconstruct or change the facades (including fenestration and trim,) roofs, foundations and chimneys of the Building. Notwithstanding the foregoing, alterations listed as "Minor" in the attached RESTRICTION GUIDELINES are considered part of ordinary maintenance and repair, and may be made to the Building and Premises without the Town's approval.

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in paragraph 3.1, Grantor shall submit to Town, for Town's approval, five copies of information (including plans, specifications and designs where appropriate,) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Town a timetable for the proposed activity sufficient to permit Town to monitor such activity. Within sixty (60) days of Town's actual receipt of any plan or written request for approval hereunder, Town shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted in which case Town shall provide Grantors with written suggestions for modification or a written explanation for Town's disapproval. Any failure by Town to act within 60 days of actual receipt of Grantors' submission or resubmission of plans or requests shall be deemed to constitute approval by Town of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

4. Standards for Review. Town shall apply Secretary's Standards whenever (a) exercising any authority created by the Restriction to inspect the exterior of the Building (b) reviewing any construction, alteration, repair or maintenance; (c) reviewing casualty damage or (d) reconstructing or approving reconstruction of the Building following casualty damage.

5. Public Access. This Restriction does not require public access. Grantor intends however to continue the current practice of holding scheduled tours of the Building, to the extent practical, for the public including honoring requests from school groups for special tours and visits by other organizations or professional associations to study the building.

6. Grantor's Rights Not Requiring Further Approval by Town. Subject to the provision of paragraphs 2.1 and 3.1, this Restriction does not prohibit, and does not require the Town's approval of, the following rights, uses, and activities of or by Grantor on, over, or under the Premises:

- (a) the right to engage in all those activities and uses that:
 - (i) are permitted by governmental statute, bylaw or regulation; and
 - (ii) are not inconsistent with the Purpose of this Restriction;
- (b) subject to the provisions of paragraph 2.1, the right to maintain and repair the Building strictly accordingly to the Secretary's Standards; and
- (c) the right to make changes of any kind to the interior of the Building that do not affect the structural integrity of the Building and do not affect the characteristics that contribute to the architectural, archeological, or historical integrity of the exterior of the Building.

7. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Town in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building and to protect public safety shall be undertaken by Grantor without Town's prior written approval of the work. Within thirty (30) days of the date of damage or destruction, if required by Town, Grantor at Grantor's expense shall submit to the Town a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and Town, which report shall include the following:

- (a) an assessment of the nature and extent of the damage to the exterior of the Building;
- (b) a determination of the feasibility of the restoration of the exterior of the Building and/or reconstruction of damaged or destroyed portions of the exterior of the Building; and
- (c) a report of such restoration and/or reconstruction work necessary to return the exterior of the Building to the condition existing at the date hereof.

8. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Town shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the exterior of the Building in accordance with plans and

specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may with prior written consent of Town, alter, demolish, remove or raze the Building and/or construct new improvements on the Premises. In such event, Grantor and Town may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts, and upon such extinguishment, the Grantor shall repay the full amount of the grant made by the Town under the Community Preservation Act for the restoration of the Building's chimney, together with interest at the rate of 7% per annum accruing as of the date of this Agreement, subject to a credit for the depreciated value of the chimney assuming a useful life of forty (40) years from the date of this Agreement.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration.

9. Insurance. Grantor shall keep the Building insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Town, within ten (10) business days of Town's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Premises is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

10. Written Notice. Any notice which either Grantor or Town may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery:

To Grantor:

Iron Work Farm in Acton, Inc.
Post Office Box 1111
Acton, MA 01720-1111

To Town:

Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger, LLP
43 Thorndike Street
Cambridge, MA 02141

Each party may change its address set forth herein by a notice to such effect to the other party given pursuant hereto.

11. Inspection. Town shall be permitted at reasonable times to inspect the Premises to determine whether the Grantor is in compliance with the terms of this Restriction.

12. Town's Remedies. Town may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary and or permanent injunction, including prohibitory and/or mandatory injunctive relief and to require the restoration of the exterior of the Building to the condition and appearance required under this Preservation Restriction Agreement. The Town shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event any civil action is commenced and Grantor is found to have violated any of Grantor's obligations, Grantor shall reimburse the Town for any costs or expenses incurring the connection with the Town's enforcement of the term of this Restriction, including all reasonable court costs, and attorney's, architectural, engineering and expert witness fees.

13. Runs with the Land. (a) This Restriction and all of the covenants, agreements and restrictions contained herein shall be deemed to be a preservation restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32 and 33. The Grantor shall fully cooperate with the Town in its efforts to obtain any government approvals necessary for the perpetual enforcement of this Restriction, including but not limited to the approval of the Commissioner of the Massachusetts Historic Commission ("MHC") as provided under G.L. c. 184, § 32. In the event that the Restriction in its current form is not acceptable to the MHC for purposes of said approval, the Grantor shall cooperate with the Town in making any and all technical (non-substantive) modifications that are necessary to obtain said approval, and hereby appoints the Town its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. This Restriction shall also be deemed an "other restriction held by any governmental body" as that term is used under G.L. c. 184, § 26 notwithstanding MHC approval or disapproval of this Restriction. The term of this Restriction shall be perpetual, subject to the provisions of paragraph 8.

(b) The Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Premises for the term of this Restriction, and are binding upon the Grantor's successors in title, (ii) are not merely personal covenants of the Grantor, and (iii)

shall bind the Grantor, its successors and assigns and enure to the benefit of the Town and its successors and assigns for the term of the Restriction.

14. Title; Authority. The Grantor hereby represents, covenants and warrants as follows:

- (a) The Grantor (i) is a non-profit corporation duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.
- (b) The execution and performance of this Restriction by the Grantor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Grantor will, at the time of execution and delivery of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance. The Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this Restriction and to the terms and conditions hereof, and the subordination of all existing mortgages to this Restriction, and that all such consents and subordinations are attached hereto and made a part hereof.

15. Assignment. The Town may, at its discretion without prior notice to Grantor, convey, assign or transfer this Restriction to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" under Section 170 (h) of the Code, as amended, whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out.

16. Recording. Town shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction in the land records of Middlesex South District Registry of Deeds, and shall transmit evidence of such recording or filing including the date and instrument, book and page or registration number of the Restriction, to the Town.

17. Amendment. If circumstances arise under which an amendment to or modification of this Preservation Restriction Agreement would be appropriate, Grantor and Town may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Preservation Restriction

Agreement or the status of Town under any applicable laws, including Sections 170 (h) and 501 (c)(3) of the Code and the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the exterior of the Building and the Purpose of the Restriction ; shall not permit any private inurement to any person of entity; and shall not adversely impact the overall architectural, cultural and historic values protected by this Restriction. Any such amendment shall be recorded in the land records of Middlesex South District Registry of Deeds. Nothing in this paragraph shall require Grantor or Town to agree to any amendment to consult or negotiate regarding any amendment.

18. **Entire Agreement.** This Restriction reflects the entire agreement of Grantor and Town. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

19. **Counterparts.** This Preservation Restriction Agreement may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Town have set their respective hands this ____ day of _____, 2005.

GRANTOR:
THE IRON WORK FARM IN ACTON, INC.

BY: _____
Lawrence Sorli, President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 2005

On this _____ day of _____, 2005, before me, the undersigned notary public, personally appeared Lawrence Sorli, proved to me through satisfactory evidence of identification, which were _____, to be the person whose names are signed on the preceding document, as President of The Iron Work Farm in Acton, Inc., and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

TOWN:

TOWN OF ACTON, MASSACHUSETTS,

By its Board of Selectmen,

Peter K. Ashton, Chairman

Walter M. Foster, Vice Chairman

Lauren Rosenzweig

F. Dore' Hunter, Clerk

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this _____ day of _____, 2005, before me, the undersigned notary public, personally appeared the foregoing Chairman and members of the Acton Board of Selectmen, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose names are signed on the preceding document, as Chairman and members of the Board of Selectmen for the Town of Acton, and acknowledged to me that each signed it voluntarily for its stated purpose.

Notary Public

Print Name:

My Commission Expires:

EXHIBIT A

The land and buildings thereon, situated in Acton, Middlesex County, Massachusetts, in that part thereof, called South Acton, being shown on a plan entitled, "Land in Acton owned by George Howard Reed," dated July 16, 1951, surveyed by Horace F. Tuttle, C.E., and recorded with Middlesex South District Registry of Deeds, Book 7780, Page 133, bounded and described as follows:

Beginning at the Northeasterly corner of the premises at land now or formerly of George Howard Reed and Main Street, as shown on said plan; thence running SOUTH $0^{\circ} 15'$ WEST along Main Street, fifty-nine and $5/10$ (59.5) feet to Railroad Avenue; thence turning and running SOUTH $78^{\circ} 53'$ WEST along said Railroad Avenue, ninety-six (96) feet; thence turning and running NORTH $56^{\circ} 40'$ WEST, twenty-one and $80/100$ (21.80) feet, NORTH $9^{\circ} 37'$ EAST, thirty-three and $80/100$ (33.80) feet, and NORTH $34^{\circ} 29'$ EAST, sixty-five and $70/100$ (65.70) feet by three lines all on other land of said Reed; thence turning and running $73^{\circ} 15'$ EAST by said land of said Reed, seventy-one and $90/100$ (71.90) feet to the point of beginning.

Containing, according to said plan, 8164 square feet of land, more or less. Together with a right of way ten (10) feet wide from the point of beginning at Main Street to Railroad Avenue, as shown on said plan.

Being the same premises described in a deed from Joseph A. Barber, et al. to Iron Work Farm in Acton, Inc., dated December 31, 1964 and recorded with said Deeds in Book 10725, Page 285.

EXHIBIT B
(Restriction Guidelines)

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify paragraph 3.1 of the terms of the Preservation Restriction Agreement, which deals with exterior alterations to Jones Tavern. Under this section, permission from the Town of Acton is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require Town review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change which must be reviewed by the Town, the following list has been developed. This is not a comprehensive list, and is provided for illustrative purposes only. It is only a sampling of some of the more common alterations which may be contemplated by building owners. Under the Preservation Restriction Agreement, "major" alterations must be reviewed by the Town and their impact on the historic integrity of the building assessed. In the event of a conflict between these Guidelines and the Preservation Restriction Agreement, the Preservation Restriction Agreement shall control.

It is the responsibility of the property owner to notify the Town in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

PAINT

Minor - Hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or scraping/stripping decorative surfaces or distinctive stylistic features including ornamental woodwork, brick, and stone.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in exterior appearance changes (i.e. disfigured walls, exposed wiring, HVAC units); the removal of substantial quantities of original materials in the course of construction.