

T-12

SUPPLEMENTAL AGREEMENT

This Agreement (the "Supplemental Agreement") is made as of the 27 day of October, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts 01720, acting by and through its Town Manager, the duly authorized designee of the Town's Board of Selectmen under the terms and conditions of a certain Comprehensive Development Agreement (the "Development Agreement") dated as of the 23rd day of June, 1989, and R. Smith Associates, Inc. (the "Developer"), a Massachusetts corporation having its usual place of business at 292 Great Road, Acton, Massachusetts 01720.

## RECITALS

Reference is made to the following facts:

A. The Town and the High Street PCRC Trust, Roy C. Smith, Trustee, u/d/t dated March 5, 1985, recorded with the Middlesex South Registry of Deeds in Book 18611, Page 609 and the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust") entered into the Development Agreement in order to set out the terms and conditions under which the Development Property (as defined in the Development Agreement) would be developed.

B. Roy C. Smith, as trustee of the Trust, transferred the Development Property and related developments rights from the Trust to the Developer by deed dated as of July 24, 1989, and recorded with the Middlesex South Registry of Deeds in Book 19966, Page 308.

C. The Town and the Developer wish to establish that the Developer will develop the Development Property in accordance with the terms and conditions of the Development Agreement.

D. The Town and the Developer also wish to clarify certain of the terms and conditions of the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Supplemental Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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1. The Developer agrees to assume all of the Trust's obligations under the Development Agreement and agrees to be bound by and to construct the Project in accordance with the terms and conditions of the Development Agreement.
2. The Town agrees to the assignment by the trustee of the Trust and the assumption by the Developer of the Trust's obligations under the Development Agreement.
3. The Developer shall not assign or otherwise transfer its rights under the Development Agreement without the prior written permission of the Town.
4. Pursuant to Section 2.2 of the Development Agreement, the Developer shall provide Security in the amount of fifteen thousand dollars (\$15,000) for the Improvements to the Conservation Area on or before November 3, 1989, or provide the Town Designee with suitable evidence that the cost of such Improvements is less than such sum and a bond for the full cost of such Improvements.
5. The Town and the Developer acknowledge that, pursuant to 780 C.M.R. §114.8, prior to the grant by the Town of a building permit to the Developer for the Project, the Town Building Commissioner may grant, in his sole discretion, a special permit authorizing the Developer to construct only foundations and other appurtenant structures (a "Special Permit"). The Town and the Developer further acknowledge that the grant of such a Special Permit shall not be considered a grant of a "building permit" within the meaning of the Development Agreement, that any construction undertaken by Developer pursuant to any Special Permit shall be at Developer's sole risk without assurance that a building permit will be granted to the Developer subsequently authorizing any further construction.

The Special Permit, if granted by the Town Building Commissioner, shall allow construction of foundations for Units located on Brewster Lane and the Recreation Center, as shown on the Site Plan, only. By applying for the Special Permit, the Developer agrees that Developer shall be responsible for maintaining the structural integrity of each foundation constructed. If frost or alterations of soil conditions occur, the Town Building Commissioner may require the Developer to retain the services of a structural engineer acceptable to the Town. Such engineer shall examine each foundation and appurtenant soil conditions and submit a report to the Town Building Commissioner and Developer concerning their condition and any corrective action which may be necessary to rectify any defects. Furthermore, if the Town Building Commissioner determines that weather conditions may be detrimental to proper construction of foundations, the Town Building Commissioner may suspend any Special Permit

granted to Developer until, in his sole discretion, more favorable conditions for such construction exist. The Special Permit may also require the Developer to "cap" any foundations constructed, subject to approval by the Town Fire Department of fire protection facilities and the Town Building Commissioner of such additional work.

The Developer acknowledges and agrees that the terms of this Supplemental Agreement and any Special Permit are in addition to and do not supersede the terms of the Development Agreement or any applicable zoning or building codes, ordinances, laws or regulations.

Prior to applying to the Town Building Commissioner for such a Special Permit, the Developer shall execute a restrictive covenant substantially in the form of the attached Exhibit A.

6. In the event the Town Building Commissioner grants one or more Special Permits to the Developer, the Developer shall:

- (a) prior to or concurrently with the construction of any foundations, construct and install all water mains (including fire protection water supplies and fixtures) and all road crossovers;
- (b) provide operational hydrants to the satisfaction of the Town Designee;
- (c) stabilize the cut abutting the main entrance to the Development Property to the satisfaction of the Town Designee and Town Engineer no later than November 13, 1989;
- (d) subgrade, address and finish with twelve (12) inches of bank run grade gravel all road and drive areas in the Development Property to the satisfaction of the Town Designee no later than November 10, 1989;
- (e) base pave Audubon Drive and Brewster Lane, as shown on the Site Plan; and
- (f) following construction of any foundation for which the Developer (1) does not receive building permit within six (6) weeks of such construction or (11) for which the Developer receives a building permit, but does not begin frame construction for a period of four (4) or more weeks from such construction; construct a cover over each such foundation or surround each such foundation with a chain link

fence, at the election and to the satisfaction of the Building Commissioner.

7. Developer agrees that if utilities must be placed below any road surfaces in the Site following application of the final coat, the Developer shall not cut the road surface but instead shall bore under such roads.

8. The Developer shall construct the Project in accordance with the following schedule, which shall supercede the schedule dated June 12, 1989 and any other prior schedule:

- (a) Clear and grub Audubon Drive, Brewster Lane and the Emergency Access Drive. (All stumps and brush will be chipped and used on site.)
- (b) Clear and grub all house sites, both North and South Phases, and stake the Unit locations. (Excess mulch will be spread in the North Phase lot locations for stabilization and decomposition.)
- (c) Cut and fill Audubon Drive, Brewster Lane, Emergency Access Drive and the drive to the Elderly Center.
- (d) Put in utilities and subgrade the road and drive system.
- (e) Concurrent with item (d), upon grant of Special Permit, start foundations in units on Brewster Lane, starting with Units 34, 36, 38, 40, 42, 44, 46, 48; then going to clusters with Units 26, 28, 30, 32; Units 18, 20, 22, 24; Units 25, 27, 29, 31; Units 17, 19, 21, 23; Units 9, 11, 13, 15; Units 1, 3, 5, 7; Units 10, 12, 14, 16; Units 2, 4, 6, 8; and the foundation for the Elderly Center and the Recreation Center, which will serve as an on-site sales office.
- (f) Concurrent with item (e), base pave Audubon Drive and Brewster Lane.
- (g) As soon as Fire Marshall approval is received and building permits are issued, start frame construction of units in the same order as the foundations, by cluster, per item (e).

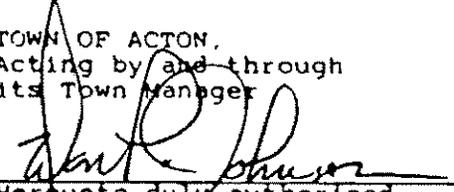
- (h) When the Southern Phase has been completed, the foundations for the Northern Phase will proceed as follows: Units 101, 103, 105, 107, 109, 111; Units 121, 123, 125, 127; Units 126, 128, 130, 132; Units 118, 120, 122, 124; Units 110, 112, 114, 116; and Units 102, 104, 106, 108.
- (i) When all the foundations have been poured and back filled, the Emergency Access Drive will be paved with binder.
- (j) Construction of the Conservation Area and trail system will be finished concurrent with the completion of the units on Brewster Lane. (Excess mulch will be stored for later use on the trails, if desired by the Conservation Commission.)
- (k) When construction and landscaping are complete on Brewster Lane, the final coat of paving will be placed on Brewster Lane, and on Audubon Drive up to the intersection of the Emergency Access Drive. Throughout the construction phase, primary access for construction vehicles will be through the Access Drive unless materials are coming from the Maynard/Concord end of High Street.
- (l) When all construction has been completed, the Emergency Access Drive will be completed, the landscaping and the entrance cleaned up and the gate secured.

9. Capitalized terms used in this Supplemental Agreement and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

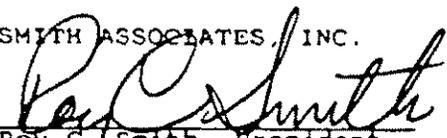
10. The Development Agreement remains in full force and effect and this Supplemental Agreement shall be construed so as to supplement and clarify such prior agreement.

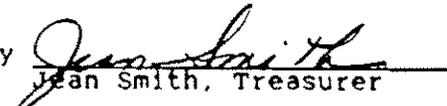
IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed under seal as of the date first written above.

TOWN OF ACTON,  
Acting by and through  
its Town Manager

  
Hereunto duly authorized

R. SMITH ASSOCIATES, INC.

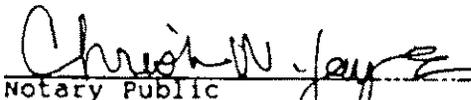
By   
Roy C. Smith, President  
Hereunto duly authorized

By   
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex . ss. 10/30 . 1989

Then personally appeared before me the above-named Don Johnson, as Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be his free act and deed as Town Manager on behalf of the Town, before me.

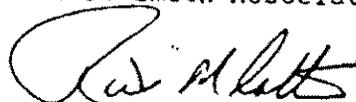
  
Notary Public  
My Commission Expires 5-13-94

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX . ss.

OCTOBER 27 , 1989

Then personally appeared before me the above-named Roy C. Smith, the President of R. Smith Associates, Inc., and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of R. Smith Associates, Inc., before me.



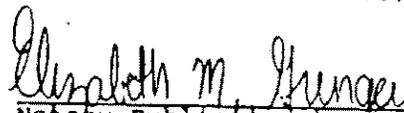
Notary Public Thomas M. Costa  
My Commission Expires: 12-1-1991

COMMONWEALTH OF MASSACHUSETTS

Middlesex . ss.

October 27 , 1989

Then personally appeared before me the above-named Jean Smith, the Treasurer of R. Smith Associates, Inc., and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of R. Smith Associates, Inc., before me.



Notary Public Elizabeth M. Granger  
My Commission Expires: Dec. 16, 1994

Exhibit ARESTRICTIVE COVENANT

IN CONSIDERATION of the approval by the Planning Board of the Town of Acton, Massachusetts (the "Planning Board"), of a plan of land located in Acton, Middlesex County, Massachusetts, entitled Audubon Hill, dated August 1, 1988, revised to June 1, 1989 by Acton Survey and Engineering, filed as part of an application for a Planned Conservation Residential Community ("PCRC") special permit (the "Special Permit"), also approved by the Planning Board on March 4, 1989; the waiver by the Planning Board of a bond or other security for the construction of the ways shown on said plan and the installation of certain services, in compliance with the Town of Acton, Massachusetts (the "Town") Subdivision Rules and Regulations, last amended October 20, 1980; and in consideration of the execution of a certain Supplemental Agreement dated as of the date hereof between the Town and R. Smith Associates, Inc., a Massachusetts corporation (the "Developer"), the successor in interest to the High Street PCRC Trust, Roy, C. Smith, trustee, the Developer, having its usual place of business in Acton, Massachusetts, its successors and assigns, hereby covenant and agree with the Planning Board and the Town as follows:

1. The Developer is the owner in fee simple of all the land included in the Special Permit and there are no mortgages of record or otherwise on any of said land, except those described below and subordinated to this covenant, and the present holders of said mortgages have assented to this covenant prior to its execution by the developer.
2. Before selling any units shown on the aforementioned plan, the Developer will construct and complete so much of the way leading from an existing public way to the units to be sold as may be necessary to provide access to such units, such construction to conform to the requirements of the Town of Acton as a public way in conformity with and as modified by the Special Permit.
3. The Developer will install or cause to be installed in such part of said street such water pipes and service with hydrants as may be required and specified by the Water Commissioners of the Acton Water District, to provide water to such land.
4. The Developer will expeditiously and diligently proceed to construct the ways shown on the aforesaid plan in accordance with the Supplemental Agreement and in the event

that the Planning Board or the Town concludes, in their sole discretion, that the Developer is not so constructing such ways, the Developer shall provide security sufficient in the Planning Board or Town's opinion for the construction and completion of such ways and services as shown on the aforesaid plan.

5. The provisions of sections 2, 3 and 4 above as pertaining to a particular unit or units may be waived in writing by the Planning Board upon provision of security sufficient in its opinion for the construction and completion of the way and services necessary to provide access and service to such unit or units.

6. The developer will incorporate the terms and conditions of this agreement in any sales agreement for the sale of any of the aforementioned units.

7. This agreement shall be binding upon successors and assigns of the Developer provided, however, that the obligations under this agreement of any grantee or grantees of any particular unit or units or their successors in title shall be limited to way and services necessary to provide access and service to the unit bought.

8. This agreement shall run with the land included in the Special Permit and operate as a restriction thereof to be enforced by the Town.

9. Two years from the date of endorsement of the aforesaid plan, or such further time as may be approved by the Planning Board, the Planning Board shall have the power to rescind the Special Permit if all the ways and appurtenant easements, including drainage facilities, are not completed, except as to units hereafter released from this restrictive agreement by the Planning Board.

10. The land included in the Special Permit is encumbered by and subject to the following mortgages which, however, are subordinated to this covenant:

- (a) Mortgage granted by the Developer to Boston Federal Savings Bank dated July 24, 1989, and recorded with the Middlesex South Registry of Deeds at Book 19966, Page 314, and the Middlesex South Registry of the Land Court as Document No. 803578; and
- (b) Mortgage granted by the Developer to Bank of New England North, N.A., dated July 24, 1989, and recorded with said Deeds at Book 19966, Page 358, and with said Land Court as Document No. 803581.

IN WITNESS WHEREOF, the Developer has executed this Restrictive Covenant under seal as of the 27 day of October, 1989.

R. SMITH ASSOCIATES, INC.

By Roy C. Smith  
Roy C. Smith, President  
Hereunto duly authorized

By Jean Smith  
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

October 27, 1989

Then personally appeared the above named Roy C. Smith, the President of R. Smith Associates, Inc. and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of R. Smith Associates, Inc., before me.

Richard M. Cotter  
Notary Public Richard M. Cotter  
My Commission Expires: 12-14-89

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

October 27, 1989

Then personally appeared the above named Jean Smith, the Treasurer of R. Smith Associates, Inc. and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of R. Smith Associates, Inc., before me.

Elizabeth M. Granger  
Notary Public Elizabeth M. Granger  
My Commission Expires: Dec. 16, 1994

Accepted by the Planning Board:

TOWN OF ACTON PLANNING BOARD

By: Roland Bank  
Its: Town Planner

Accepted by the Town:

TOWN OF ACTON, MASSACHUSETTS

By: Don Johnson  
Its: Town Manager

