

ATTACHMENT 3

THIS IS A TRUE AND CERTIFIED COPY



PRIVATE WAY COVENANT AND AGREEMENT

SCHEIER & KATIN, P.C.
103 GREAT ROAD
ACTON, MA 01720

COVENANT AND AGREEMENT made May 2, 2007 by Renwick S. Tweedy, Jr. and Kate Baker Tilton, formerly known as Kate Baker Tweedy, (hereinafter referred to as "Owner") being the owners of the premises located at 45 Main Street, Acton, Middlesex County, Massachusetts shown on a plan of land entitled "Road Improvement Plan" prepared for Renwick S. Tweedy, Jr. by LandTech Consultants, Inc., scale: 1" = 40', dated April 26, 2006, last revised by LandTech Consultants, Inc. on April 3, 2007, and as further amended by "Amended Construction Plan (CP-1A)", dated July 20, 2007, prepared by FORESITE Engineering Associates, Inc., Scale: 1"=40' . The said premises are also shown as Lots 1A, 2A, 3A and 4 on a plan entitled "Plan of land, Main Street & Conant Street, Acton, Massachusetts" by Foresite Engineering, Prepared for Renwick S. Tweedy, Jr., scale: 1" = 40' dated July 20, 2007, (hereinafter referred to as the "Plan"), said plan to be recorded with the Middlesex South District Registry of Deeds herewith and to which plan reference may be had for a more particular description of said lots. Said premises are the subject of Decision No. 06-06 of the Acton Planning Board entitled "Determination of the Status of the Existing Way at 45 Main Street" dated September 12, 2006, and recorded with Said Registry of Deeds in Book 49838 page 258. For title of the Owner, reference should be made to two deeds recorded with the Middlesex South Registry of Deeds in Book 13072 page 538 and Book 16054 page 498, respectively.

WHEREAS, the Owner desires to confirm the rights and obligations of the Owner and his respective successors and assigns as owners of the said Lots in and to the private way shown on said plan as "Renwick Way" (hereinafter referred to as the "Private Way"); and

WHEREAS, Marianne Varno (hereinafter referred to as "Varno") owns two parcels of land, both now known and numbered 47 Main Street, Acton, Massachusetts, fully described in a deed recorded with said Registry in Book 11641 page 18 (hereinafter referred to as the "Varno Lots"); and

WHEREAS, Leonard Phillips and Susan Phillips (hereinafter referred to as "Phillips") own a parcel of land now known and numbered 43 Main Street, Acton, Massachusetts, fully described in a deed recorded with said Registry in Book 13073 page 401 (hereinafter referred to as the "Phillips Lot"); and

WHEREAS, it is intended that all of the easements, covenants, restrictions and agreements shall inure to the benefit of the said Lots and run with the land;

NOW, THEREFORE, the undersigned hereby declare that the said Lots are and shall be held and conveyed subject to and with the benefit of the following rights and obligations:

PRIVATE DRIVE AND UTILITY EASEMENTS

1. The Owner and Varno and their respective heirs, successors and assigns, shall have the right in common with each other, to use, from time to time, the Private Way and any turnouts, road beds, culverts and headwalls which are part of the Private Way, and have or will be constructed whether shown on said Plan or not, for all purposes for which private ways are commonly used, including, without limitations, the right to pass and repass between each Lot and the right to install and maintain drains, culverts and underground utilities in and along and across said portions. Use of the Private Way by vehicular traffic is restricted to ingress and egress, and does not include the parking of vehicles on the Private Way, except for occasional overflow non-overnight guest parking as does not otherwise interfere with the use of the Private Way by the owner(s) of other lots and their invitees, and by emergency, fire, rescue and police vehicles. Although the Phillips Lot abuts the Private Way, the existing driveway providing access to the Phillips Lot is located on Main Street and, therefore, it is not intended at this time that Phillips will make use of the Private Way for access. Furthermore, it is also intended that the access to the Private Way to be used by Varno is to be limited at this time to access to only one of the Varno Lots (i.e. the lot with the residence thereon, hereinafter referred to as the "Varno House Lot") as same is presently constituted and not for access by an additional residence that may result from the division of the Varno Lots as same are presently constituted (hereinafter referred to as "Future Varno House Lot"). Phillips and Varno and their respective heirs and assigns shall have the right to use the Private Way in the future provided, however, the said right to use the Private Way shall be conditional upon compliance with the cost sharing provisions of Article 2e.

2. The Owner shall have sole responsibility for the repair and maintenance of Private Way, so as to provide for general maintenance, and for continuous year round access for vehicular traffic for the convenience of owners of Lots, and to provide continuous year round access for all emergency, fire, rescue, police, moving, constructions and maintenance vehicles. Such repair and maintenance shall include, without limitation:

a. Maintenance: Repair and maintenance of Private Way, including all turnouts, road beds, shoulders, culverts, and headwalls, as shown on the Plan. The Private Way, including all turnouts, shall be maintained in good condition and kept open to all vehicular traffic in all seasons of the year to provide access for all emergency vehicles. All culverts now or hereafter installed shall be kept clear and open.

b. Snow Removal: The removal and disposal of all snow from the Private Way, including all turnouts.

c. Planting/Tree Maintenance: The removal and disposal of fallen limbs and trees, the clearing and removal of all brush and foliage which might obstruct the sight of vehicles using Private Way, and the preservation of plantings and trees on the Private Way.

d. Operation and Maintenance of the Drainage System:

- (i). Discharge locations shall be inspected on a weekly basis or after significant storm events.
- (ii). All drainage system components are to be owned and maintained by the owner/developer. After the completion of the project the homeowners will assume responsibility for the operation and maintenance in accordance with the Private Way Covenant and Agreement of record.
- (iii). Catch basin sumps are to be cleaned anytime sediment build up reaches 18" below the pipe invert, typical depth of sump in a catch basin is four (4) feet below the pipe invert. Sediments and debris shall be removed and disposed according to the Department of Environmental Protection (D.E.P.) approved methods. Inspection should occur at least four (4) times a year and before/after any major storm event.
- (iv). All paved surfaces are to be kept free of sediment and debris, street sweeping is recommended on a regular basis and more often as needed.
- (v). Dust control shall be maintained by watering or other dust prevention methods.

e. Cost: The cost of such repair and maintenance as set forth in subparagraphs 2a, 2b, 2c and 2d shall be borne solely by the Owner, provided, however, repairs and maintenance of any portion of any driveway serving any of the Phillips Lot or the Varno Lots that is not located in the Private Way shall be the sole responsibility and financial obligation of the lot owner.

In the event that Varno commences to use the Private Way for access to the Varno Future House Lot or Phillips commences to use the Private Way for access to the Phillips Lot, then in either such event, Varno and/or Phillips and their respective heirs, successors and assigns shall commence to pay One fifth (1/5) of the total cost of the maintenance and repair of the Private Way as set forth in this Section 2. The responsibility of any owner of a property making future use of the Private Way for access to share in the cost of maintenance and repair shall commence upon the use of the Private Way for vehicular ingress and egress for the purposes of marketing or preparing such property for excavation, whereupon, any such property owner or their heirs, successors and assigns shall be bound by this covenant in the same manner as the Owner, Varno and Phillips and their heirs, successors and assigns.

3. The Owner, or Owner's designee, shall arrange for the repair and maintenance of the Private Way, including, without limitation, retaining employees, agents, independent contractors or others to perform such repair and maintenance services.

4. The Owner hereby reserves the right to establish reasonable rules and regulations in furtherance of these restrictions, which rules and regulations shall be binding on all of the owners of all lots using the Private Way.

ACCESS EASEMENT

5. The Owner hereby covenants and agrees that an easement over a portion of Lot 1A as shown on the Plan and described as "Access, Grading and Utility Easement" (hereinafter described as "Access Easement") is hereby granted to the Inhabitants of the Town of Acton for the purpose of entering upon the Owner's premises with emergency vehicles and turning around in the Access Easement. Notwithstanding anything herein to the contrary, the costs of maintenance of the Access Easement will be shared equally by the present and future owners of Lots 1A, 2A and 3A as shown on said plan. Neither Varno nor Phillips will ever have any responsibility to share in the costs of maintenance, repair and snow clearing of the Access Easement.

ADMINISTRATION AND ENFORCEMENT

6. The Owner shall have the right to enforce any of the obligations of every other owner of any of the above described properties subject to this Covenant and Declaration as to use of the Private Way and the Access Easement so as to provide to each lot safe and convenient access for owners, emergency and maintenance vehicles, and any other obligation or restriction contained herein, as well as to enforce the rules and regulations adopted hereunder, by any legal or equitable means.

7. A certificate signed and acknowledged by the Owner as to any fact affecting the terms of these restrictions shall be conclusive evidence of such fact.

8. No amendment of these restrictions which would affect the requirements imposed by the Town of Acton Planning Board shall be effective unless made with the approval of the said Planning Board and until said amendment is duly recorded with the Middlesex South Registry of Deeds.

The Owner and their respective heirs, successor and assigns, hereby covenant and agree that they shall never petition the Town of Acton to request that the Private Way become a public way and, as a result, the Town of Acton will not be responsible for snow plowing or any other related maintenance or repair of the Private Way. Notwithstanding anything herein to the contrary, in the event that the Town of Acton or other governmental agency duly votes to take or accept Private Way, then in that event the undersigned and the successors and assigns of the undersigned hereby consent and agree to any such acceptance or taking and to execute and all documents required to effectuate said taking. Upon the effective date of any such acceptance or taking, this Private Drive Agreement shall become null and void without recourse by and between the owner(s) of any of the above described properties with the exception of any such owner's unpaid share of the cost of maintenance and repair of the Private Way Area.

THIS AGREEMENT MAY BE EXECUTED IN COUNTERPART.

This Covenant and Agreement is hereby executed under seal on the date first above written.

[Handwritten signature]

~~Renwick S. Tweedy, Jr.~~

Kate Baker Tilton (Kate Baker Tweedy)

Kate Baker Tilton, formerly known as
Kate Baker Tweedy

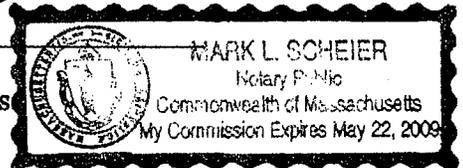
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 30th day of May, 2007, before me, the undersigned notary public, personally appeared Renwick S. Tweedy, Jr., proved to me through satisfactory evidence of identification, which was driver's license/passport/employee ID card/, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Handwritten signature]

Notary public:
My commission expires



STATE OF CALIFORNIA

County of San Diego

On this 30th day of April, 2007, before me, the undersigned notary public, personally appeared Kate Baker Tilton, formerly known as Kate Baker Tweedy, proved to me through satisfactory evidence of identification, which was driver's license/passport/employee ID card/, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Renu A. Khanna, Notary Public

Notary public:
My commission expires: May 2, 2010

