

**PRIVATE WAY COVENANT AND MAINTENANCE AGREEMENT**

**MICMAC LANE, ACTON**

WHEREAS, Judith R. Kotanchik, of 48 Nashoba Road, Acton, Middlesex County, Massachusetts 01720 (hereinafter referred to as the “Declarant”) is the fee simple Owner of Lots 1, 2, 3, 4 and 5 on a plan entitled “Definitive Subdivision Plan, Micmac Lane, a Residential Compound, Acton, MA”, Record Plan, For: Kotanchik, Scale: 1” = 40’, December 31, 2007, last revised, prepared by Stamski and McNary, Inc., 80 Harris Street, Acton, Mass., recorded herewith (hereinafter referred to as the “Plan”); and

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WHEREAS, Lots 1, 2, 3, 4 and 5 (hereafter, together, the “Lots”) shall be accessed exclusively by a private way, from Nashoba Road to said Lots, said way being shown as “Micmac Lane” on the Plan (hereafter “Micmac Lane”); and

WHEREAS, the development also contains drainage and utility facilities, for the support and benefit of Micmac Lane and said the Lots, which are located or to be located in those areas shown as “Drainage Easement A” and “Drainage Easement B” (together, “Drainage Easements”), and “Utility Easement A” and Utility Easement B” (together, “Utility Easements”);

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**Comment [ka1]:** Utility Easements A and B appear to be only for Lot 5 and the Porter lot. If that is the case, you should reconsider whether Lots 1-4 should participate in the maintenance of the utility easements (and possibly rephrase the sections of this document that refer to them to make them solely the responsibility of Lot 5 and the Porters).

NOW, THEREFORE, the Declarant hereby subjects said Lots 1, 2, 3, 4 and 5 to the following Private Way and Maintenance Agreement, which Agreement runs with the land and shall be binding on Declarant, their successors and assigns.

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(1) the Owners of the Lots shall have the perpetual, non-exclusive right to use Micmac Lane for all purposes for which private ways are commonly used for in the Town of Acton, and for the installation and maintenance of any and all utilities;

**Deleted:** and the utilities located within Micmac Lane for travel on foot and by motor vehicles to and from said Lots to Nashoba Road

(2) the use of Micmac Lane shall be restricted to travel thereon to and from the five Lots to Nashoba Road by the Owners of the Lots and their respective family members, guests and business invitees;

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**Deleted:** (and any accessory uses permitted by this Covenant and Maintenance Agreement and/or the Decision)

(3) the Owners of the Lots shall bear jointly and equally the responsibility of (a) maintenance, repairs, reconstruction, and snowplowing of Micmac Lane, (b) the maintenance and repairs of the utility lines located or to be located within the Utility Easements, and (c) the maintenance and repairs of the drainage facilities located or to be located within the Drainage Easements, as follows:

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Lot 1	20%
Lot 2	20%
Lot 3	20%
Lot 4	20%
Lot 5	20%

If any owner of any of the above described properties fails to pay an amount duly assessed for the cost of such repair and maintenance, such owner shall be liable for interest in the amount of the unpaid amount at the legal rate for judgements, and the costs of collection, including reasonable attorney's fees.

(4) the terms "maintenance and repair" shall include, but shall not be limited to, any necessary reconstruction, any expense of snowplowing and repairs in order to maintain Micmac Lane in a good and passable condition, and the Utility Easements and Drainage Easements in a good and workable condition (~~see details of the maintenance plan as set forth in the Drainage System Operation and Maintenance Plan, attached hereto as Exhibit "A";~~);

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(5) any necessary maintenance, repair or reconstruction of Micmac Lane shall be carried out so that the products of erosion as a result thereof shall not be carried in the storm drainage system;

(6) maintenance and repair of Micmac Lane, the Utility Easements and/or the Drainage Easements shall be performed upon the reasonable request of the Owners of two (2) of the Lots. If any of the Owners of any of the Lots shall fail or refuse at any time to bear responsibility and make payment, or such maintenance or repair shall otherwise be in dispute, the Owners of each of the Lots shall select an arbitrator and if the arbitrators so selected cannot by majority agree on a resolution within ten (10) days from appointment, then they shall select one arbitrator by a majority vote within five (5) days thereafter, and the decision of the arbitrator so selected shall be binding on all of the Lot Owners;

(7) the Owners of the Lots shall restrict their use of the private way as above stated and shall not impede the passage of foot or vehicle traffic on Micmac Lane by parking upon it;

(8) it is hereby acknowledged and understood that Micmac Lane, and the utility and drainage facilities appurtenant thereto, will not at any time be accepted by the Town of Acton as a public way, and accordingly, all snowplowing and other maintenance and repair will be and remain the sole responsibility of the Owners from time to time of said Lots;

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(9) The Owners of Lots, for themselves and their heirs, successors and assigns, hereby acknowledge that Micmac Lane is subject to the terms and conditions set forth in Decision 08-05 of the Acton Planning Board (herein referred to as the “Decision”), including, without limiting the generality of the foregoing, Micmac Lane shall remain a private way and the Owners of Lots shall:

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- a. be jointly responsible for the removal of snow and ice on Micmac Lane;
- b. be jointly responsible for any general maintenance and upkeep of Micmac Lane and any associated drainage structures and other utilities;
- c. not petition the Town of Acton to accept Micmac Lane as a public way and shall not petition the Town of Acton to provide snow and ice removal services or any maintenance or repair of Micmac Lane;

(10) The Owners of the Lots and their respective heirs, successors and assigns, hereby agree that they shall, from time to time, execute any additional documents, required by the Town of Acton, or otherwise, reasonably required to enable said private way to be used to service said Lots;

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WITNESS the execution hereof under seal this \_\_\_\_ day of \_\_\_\_\_, 2008.

DECLARANT:

\_\_\_\_\_  
Judith R. Kotanchik

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

\_\_\_\_\_, ~~2007~~ **2008**

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Then personally appeared before me, the undersigned notary public, Judith R. Kotanchik, proved to me through satisfactory evidence of identification, which was MA DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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## Exhibit A

### **DRAINAGE SYSTEM OPERATION AND MAINTENANCE PLAN**

THE IMPLEMENTATION, INSPECTION, AND REPAIR OF THE EROSION CONTROLS IS THE RESPONSIBILITY OF THE SITE CONTRACTOR DURING CONSTRUCTION.

THE INSPECTION AND OPERATION OF THE STORM WATER MANAGEMENT SYSTEM UPON COMPLETION OF CONSTRUCTION IS THE RESPONSIBILITY OF:

DURING CONSTRUCTION: APPLICANT – JIM KOTANCHICK  
48 NASHOBA ROAD  
ACTON, MA 01720

PARTIES RESPONSIBLE FOR LONG TERM OPERATION/MAINTENANCE:

HOME OWNERS OF LOTS SERVED BY PRIVATE WAY "MICMAC LANE".

#### SCHEDULE FOR INSPECTION AND MAINTENANCE:

##### STREET SWEEPING:

THE PAVEMENT SHALL BE SWEEPED OF ALL SEDIMENT ONCE IN THE SPRING AND ONCE IN THE FALL.

##### DEEP SUMP AND HOODED CATCH BASINS

THE DEEP SUMP FOR THE CATCH BASINS SHALL BE INSPECTED AND CLEANED ANNUALLY. THE CATCH BASINS SHALL HAVE A FOUR FOOT DEEP SUMP AND THE WATER LEVEL IS MAINTAINED BY THE DISCHARGE PIPE AT FOUR FEET. THE DISCHARGE PIPE IS HIDDEN FROM VIEW BY A HOODED OUTLET.

- THE DEPTH OF THE SEDIMENT IN A BASIN SHALL NOT EXCEED A DEPTH OF 18 INCHES AS DETERMINED BY PROBING WITH A STICK. IF THE STICK HITS THE BOTTOM WITHIN 30 INCHES OF THE WATER LEVEL, MORE THAN 18 INCHES OF SEDIMENT HAS ACCUMULATED AND MUST BE REMOVED. LICENSED PERSONS SHOULD REMOVE AND DISPOSE OF THE CONTENTS OF THE SUMP IN ACCORDANCE WITH APPLICABLE REGULATIONS.

##### DRAINAGE BASIN

IN EACH OF THE FIRST THREE YEARS AFTER CONSTRUCTION, TWO INSPECTIONS ARE REQUIRED IN BOTH THE GROWING AND NON-GROWING SEASONS. AFTER SUCCESSFUL ESTABLISHMENT OF ALL REQUIRED VEGETATION AND SURFACES WITHSTAND EROSION, INSPECTION AND MAINTENANCE SHOULD CONTINUE ON A YEARLY BASIS. THE FOLLOWING OBSERVATIONS AND CORRECTIVE MEASURES SHOULD BE MADE DURING EACH INSPECTION:

- SIDE SLOPES OF THE CHANNEL SHALL BE INSPECTED FOR EROSION. ALL ERODED AREAS SHALL RECEIVE 6" OF LOAM AND BE RESEEDED PER ORIGINAL DESIGN PLAN. AREAS OF CONTINUED EROSION SHALL BE STABILIZED WITH 3" MINUS RIPRAP.
- REMOVE ALL SEDIMENT FROM THE CHANNEL ONCE THE SEDIMENT REACHES 10% OF CHANNEL VOLUME OR 3-INCH DEPTH.

##### EMERGENCY CONTACTS:

IN THE EVENT OF A HAZARDOUS MATERIALS SPILL ON THE SITE THE FOLLOWING PARTIES SHALL BE CONTACTED:

FIRE DEPARTMENT: PH: 978-264-9645

##### RECORDS:

THE OWNER SHALL MAINTAIN AN INSPECTION LOG OF ALL ELEMENTS OF THE STORM WATER MANAGEMENT PLAN. THE OWNER SHALL MAINTAIN A MAINTENANCE LOG DOCUMENTING THE INSPECTION AND MAINTENANCE OF THE DRAINAGE STRUCTURES UNDER HIS CONTROL. A COPY OF THE EROSION CONTROL AND STORM WATER MAINTENANCE PLAN AND INSPECTION LOGS SHALL BE KEPT ONSITE AT ALL TIMES.

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