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**TOWN OF ACTON**  
**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

Office of Selectmen

**ORDER OF TAKING**

At a meeting of the Board of Selectmen of the Town of Acton held this 16<sup>TH</sup> day of August 2004, it is ordered:

WHEREAS, the Board of Selectmen has determined and adjudged that common convenience and necessity requires that a Town way be laid out in the location hereinafter described, which is the present location of the private way known as Davis Road, and having complied with the requirements of the law relating to notice, did on the 8<sup>th</sup> day of March 2004 layout such way and filed its Order of Street Layout of the way in the office of the Town Clerk on the 9<sup>th</sup> day of March 2004, and

WHEREAS, said Town at an Annual Town Meeting duly called for the 5<sup>th</sup> day of April 2004, voted to accept said laying out, and said meeting was adjourned on April 13, 2004, and

WHEREAS, it is necessary to acquire the land in fee simple for the purpose of said way,

NOW THEREFORE, we, the undersigned Board of Selectmen of said Town duly elected, qualified and acting as such, do hereby, under and by the authority of Section 24 of Chapter 82 of the General Laws and of any and every other power and authority us hereto enabling, take by Eminent Domain under Chapter 79 of the General Laws the title in fee simple to the land in said Town bounded and described as follows:

**In the BELLOWS FARM SUBDIVISION**

**DAVIS ROAD** – from the previous limit of acceptance at Station 23 + 00 (1300 feet from Great Road) a distance of 657 feet, more or less, in a generally northeasterly direction, this being the portion of Davis Road in the Briarbrook Village Condominium.

The description, bounds, and location of Davis Road in the Briarbrook Village Condominium are shown on a plan entitled, "Definitive Plan of Bellows Farm in Acton, Mass. Scale 1" = 80 feet" dated April 4, 1986 (modified March 31, 1987 and June 2, 1987) prepared by Acton Survey and Engineering, Inc. and recorded at the Middlesex South District Registry of Deeds (the "Registry") as Plan No. 1532 of 1987, in Book 18670 Page 482 (the "1987 Definitive Plan"). The Briarbrook Village Condominium is shown as Lot 1 on the 1987 Definitive Plan. Davis Road is also shown on an As-Built Plan entitled "Plan & Profile, Sta. 20+25 to Sta. 42+00, Davis Road, Acton MA" by Howe Surveying Associates, Inc., dated December 3, 1992 (Latest Revision: January 18, 1995), and on file with the Town of Acton Engineering Department. Davis Road in the Briarbrook Village Condominium is more particularly described as follows:

## DAVIS ROAD

Beginning at a point on the easterly sideline of Davis Road 147.17 feet from a railroad spike and punch mark at a point of tangency of a curve with a radius of 695.00 feet;

Thence N 03° 35' 30" E a distance of 160.00 feet to a stone bound;

Thence northeasterly along a curved line to the right with a radius of 300.00 feet, a distance of 466.20 feet to a point;

Thence N 15° 39' 57" W a distance of 52.26 feet to a point

Thence southwesterly along a curved line to the left with a radius of 350.00 feet, a distance of 527.50 feet to a stone bound;

Thence S 03° 35' 30" W a distance of 160.00 feet to a point;

Thence S 86° 24' 30" E a distance of 50.00 feet to the point of beginning;

Containing 32,842 square feet and being shown as Parcel 22-2 on Map D-5 of the Acton Town Atlas.

The portion of Davis Road herein described is also shown as "Parcel F, Right-of-Way and Utility Easement" on a plan entitled "Easement Plan, Briarbrook Village Condominiums, in Acton, Mass." dated December 16, 1986 (revised 4/30/87) by BSC-Robinson & Fox, a division of Boston Survey Consultants, Inc., and recorded at the Registry as Plan No. 1119 (2-2) of 1987 (the 1987 Easement Plan) and described in a deed to Davis Condominium Corporation dated November 6, 1987, and recorded at the Registry in Book 18678, Page 119. See also the Master Deed of the Briarbrook Village Condominium dated November 6, 1987, and recorded at the Registry in Book 18678 Page 152.

## EASEMENTS

Davis Road in the Briarbrook Village Condominium is hereby taken together with certain easements as shown on the 1987 Definitive Plan and the 1987 Easement Plan. Said easements are more particularly described as follows:

The perpetual right and easement over, under and upon all those areas described and shown as "Utility Easement" and "20' Wide Utility Easement" on the 1987 Definitive Plan and "Utility Easement (To Be Conveyed to the Town of Acton)" and "20' Wide Utility Easement (To Be Conveyed to the Town of Acton)" on the 1987 Easement Plan. Without limiting the generality thereof, said easements include the right to enter upon the easement areas to install, maintain, operate, repair, remove and replace drainage facilities of all types and kinds, including, but not limited to, pipes, culverts, manholes, catch basins, detention/retention basins, slopes, ditches and appurtenant structures for the surface and subsurface drainage of storm water. These easements also include the right to enter upon the easement areas to install, maintain, operate, repair, remove, and replace wires, cables, poles, pipes, manholes, and appurtenant structures for the provision of public and private utilities, including without limitation, sewer, water, gas, electric, telephone, fire protection, cable television, and the like.

Without limiting the foregoing, the easements described herein include the right to enter upon said easement areas for the purpose of effectuating this taking, and to fully exercise any rights granted by said easements.

All installation, maintenance, use, repair, replacement and removal hereby authorized shall be done in such a manner as not to interfere unreasonably with the surface or aerial uses of said easement area. Whenever any surface is disturbed by authority of this instrument, it shall be restored with reasonable promptness to substantially its condition prior to such disturbance.

Included in this taking are all trees, roadway improvements and all structures located thereon, but not including wires, cables, poles, towers, pipes, conduits and other appurtenances for the conveyance of gas, electricity, cable television, telephone communication, or street lighting located in or upon Davis Road, or any of the easements herein described. The pipes, manholes, pump stations, gates, valves, fittings, and other facilities of whatever description for the collection and treatment of sanitary sewerage located on, in or under Davis Road, or the easements described herein are also excluded from this taking. There is also excluded from this taking a right reserved to the Briarbrook Village Condominium to maintain the two (2) existing sewer mains crossing Parcel F as shown on the 1987 Easement Plan subject to the following conditions:

1. Vehicular access to the Arbors and Bellows Farm Condominium shall be maintained at all times.
2. Any excavation of the paved surface of Davis Road will be restored with reasonable promptness to its condition prior to such excavation.
3. Prior to any excavation the Acton Police, Fire and School Bus Dispatcher will be notified in writing giving the dates and times the work will be in progress.
4. The contractor will obtain a Dig Safe Number.
5. A Permit to Construct Within a Public Way will be obtained from the Town of Acton and the required bond posted and fee paid, said permit will not be unreasonably withheld.

No damages have been sustained by persons to their property by reason of this taking, and no damages are awarded to any person.

No betterments are to be assessed by reason of this taking.

We hereby certify that the foregoing is a true copy of an order passed by the Board on August 16, 2004.

**BOARD OF SELECTMEN, TOWN OF ACTON**

\_\_\_\_\_  
F. Dore Hunter, Chairman

\_\_\_\_\_  
Peter K. Ashton, Vice Chairman

\_\_\_\_\_  
Robert A. Johnson, Clerk

\_\_\_\_\_  
William H. Shupert, III

\_\_\_\_\_  
Walter M. Foster

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

August 16, 2004

Then personally appeared before me, the undersigned notary public, F. Dore Hunter, Peter K. Ashton, Robert A. Johnson, William H. Shupert III, and Walter M. Foster, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose, as Selectmen of the Town of Acton, as aforesaid.

\_\_\_\_\_  
Christine M. Joyce, Notary Public  
My commission expires: Sept. 26, 2008

TOWN OF ACTON  
 ORDER OF TAKING  
 DAVIS ROAD

2004  
 TOWN OF ACTON - DAVIS ROAD

SCHEDULE OF DAMAGES

NAME OF OWNER	ADDRESS OF PROPERTY	BOOK & PAGE	MORTGAGEE	MORTGAGE BOOK & PAGE	PARCEL	SQ. FT. TAKEN	ESTIMATED DAMAGES
Briarbrook Village Condominium	34 Davis Road	18678/119 18678/152	None	None	F	32,842	None

GRAHAM & HARSIP, P.C.  
289 GREAT ROAD, SUITE 101  
ACTON, MASSACHUSETTS 01720  
PHONE: 978-264-0480  
FAX: 978-264-4990

FAX TRANSMITTAL SHEET

DATE: August 13, 2004  
FAX TO: Acton Engineering Department  
ATTENTION: David Abbt  
FROM: Steven R. Graham  
RE: Taking of Davis Road

NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 4

Attached is a copy of the Resolution of No Opposition to Taking which has been executed by a majority of the Board of Governors of Briarbrook Village Condominium Association.

I will FedEx the original to Pamela Messenger at Palmer & Dodge, LLP for delivery on Monday.

Please call if you have any questions.

SHOULD ANY PAGES NEED TO BE RE-TRANSMITTED, PLEASE CALL 978-264-0480 AND ASK FOR JOANNE MARTIN.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that use, dissemination, distribution or reproduction of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. Thank you.

Board of Governors  
Briarbrook Village Condominium Association  
21 Davis Road  
Acton, MA 01720

Resolution of No Opposition to Taking

Action taken at Meeting of Board of Governors of the Briarbrook Village Condominium a condominium established pursuant to M.G.L. Ch.183A by Master Deed dated November 6, 1987 and recorded with Middlesex Registry of Deeds in Book 18678, page 152 on July 28, 2004 at which a majority of the Board were present:

WHEREAS, the Town of Acton has expressed its desire to acquire by "friendly taking" a portion of Davis Road also known as Parcel "F" which constitutes an element of the common area of the Briarbrook Village Condominium ("Briarbrook" or the "Condominium") and which is more fully described on the attached Exhibit "A";

WHEREAS, the Bellows Farm LLC has solicited the Condominium's support for the friendly taking and has offered the Condominium financial compensation in the amount of \$15,000.00 as consideration for Briarbrook's assistance to the Town;

WHEREAS the friendly taking would reserve to the Condominium the right to maintain two existing sewer mains crossing parcel "F";

WHEREAS, the Board of Governors has determined that the taking is in the best interests of the unit owners of the Briarbrook Village Condominium;

WHEREAS, Parcel "F" was subject of an Order of Taking by the Town of Acton to be executed August 16, 2004 and recorded with Middlesex Registry of Deeds in Book \_\_\_\_\_, page \_\_\_\_\_;

NOW THEREFORE, for consideration received the value of which is hereby acknowledged, the Board of Governors, pursuant to the Powers granted it in the Condominium By-Laws, hereby declares that it shall not oppose, contest or undertake any proceeding against the Order of Taking and shall not pursue any claim against the Town for damages resulting from the taking.

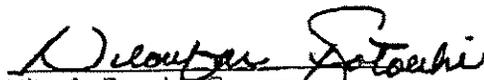
So voted.

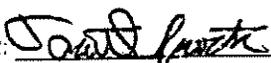
  
\_\_\_\_\_  
Faith Proctor, Governor

  
\_\_\_\_\_  
Chris McCauley, Governor

\_\_\_\_\_  
Steve Strandberg, Governor

\_\_\_\_\_  
Bryan Wilson, Governor

  
\_\_\_\_\_  
Niloufar Fotouhi, Governor

Attest:   
\_\_\_\_\_, Secretary  
Faith Proctor, Secretary.

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss Aug 10, 2004

On this 10th day of August, 2004 before me, the undersigned notary public, personally appeared the above named Faith Proctor, proved to me through satisfactory evidence of identification, which was MAR D.L., to be the person whose name is signed on the within document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



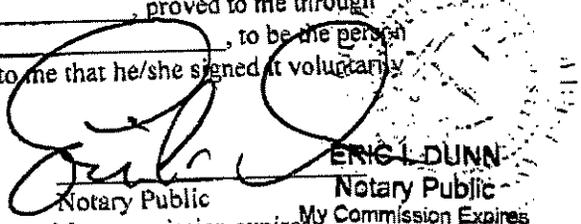
WENDY E. BAKER  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 24, 2009

Wendy E. Baker  
Notary Public  
My commission expires: 4/24/2009

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss August 11, 2004

On this 11 day of August, 2004 before me, the undersigned notary public, personally appeared the above named Wiloufer Fouch, proved to me through satisfactory evidence of identification, which was MAR, to be the person whose name is signed on the within document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

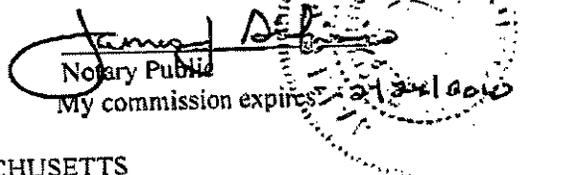


Eric L. Dunn  
Notary Public  
My commission expires: December 20, 2007

COMMONWEALTH OF MASSACHUSETTS

, ss , 2004

On this 12 day of August, 2004 before me, the undersigned notary public, personally appeared the above named Christopher McLaney, proved to me through satisfactory evidence of identification, which was Mass D.L., to be the person whose name is signed on the within document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



James D. [Signature]  
Notary Public  
My commission expires: 12/24/2004

COMMONWEALTH OF MASSACHUSETTS

, ss , 2004

On this \_\_\_ day of \_\_\_\_\_, 20\_\_ before me, the undersigned notary public, personally appeared the above named \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the within document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

, ss

, 2004

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned notary public, personally appeared the above named \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose name is signed on the within document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires: