



Acton Board of Health

472 Main St.
Acton, MA 01720
Phone: (978) 929-6632
Fax: (978) 929-6340
Email: Health@acton-ma.gov



Public Health
Prevent. Promote. Protect.

Doug Halley, Health Director

August 9, 2012

TO: Steve Ledoux, Town Manager

FROM: Doug Halley, Health Director

SUBJECT: License Agreement for a sewer line in the Right Of Way

The Health Department has received a request from Richard Tracy of 16 Henley Road to install a sanitary sewer pipe in a portion of Henley Road. Mr. Tracy has received permission from the North Acton Treatment Corporation to access their facility through an easement on Lot 10B Henley Road. In order to bring his sewer line to that location he will need to install the line within the Right of Way for Henley Road.

Since Mr. Tracy's request in April we have been working closely with Town Counsel to develop a license agreement that would be protective of the interests of the Town and Mr. Tracy. That agreement is now complete and ready for signature by the Board of Selectmen.

The Health Department recommends that the Board of Selectmen approve and sign the attached license. Mr. Tracy has a failed septic system. Reconstructing a new system on his property would be difficult and he would prefer a more permanent solution by connecting to the North Acton Treatment Plant. The Health Department has worked closely with both the Massachusetts Department of Environmental Protection and the North Acton Treatment Corporation to ensure that this additional flow from 16 Henley Road can be accepted.

8/20

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Richard Tracy
16 Henley Road
Acton, MA 01720
Tel: 978-263-9035
Fax: 978-263-9034
tracy@cambridgedesign.com

April 27, 2012

Doug Halley
Health Director
Acton Board of Health
472 Main Street
Acton, MA 01720

Dear Doug,

Our septic system located at 16 Henley Road is on the verge of failing. The DEP recently approved a connection between 16 Henley Road and the North Acton Treatment Corporation (NATC) sewage treatment plant. I am writing this letter to request permission from the Town of Acton to use the right of way on Henley Road to connect to the closest access to the NATC system located at 10B Henley Road.

This is the last step of the process for approval and I look forward to your response.

Sincerely yours,

Richard Tracy

EXHIBIT A
Deed – 16 Henley Road

I, DEBORAH ANGELEY,

of Rockland,

Plymouth County, Massachusetts,

in consideration of ONE HUNDRED EIGHTY-FOUR THOUSAND and 00/100 (\$184,000.00) DOLLARS

grant to RICHARD W. TRACY and SUSAN M. TRACY, husband and wife, as tenants
by the entirety

of 16 Henley Road
Acton, MA 01720

with quitclaim covenants

~~the standard~~

A certain parcel of land, with the buildings thereon, situated in Acton, Middlesex County, Massachusetts, being shown as Lot 8 on a plan entitled, "Plan of 'Henley Acres' a subdivision of Land in Acton, Mass. owned by Clarence I. Henley," dated July 1953, Snelling & Hilton, Reg. Land Surveyors, recorded with Middlesex South District Registry of Deeds at End of Book 8121, bounded and described as follows:

SOUTHEASTERLY: by Henley Road, one hundred twenty-five (125) feet;

NORTHEASTERLY: by Lot 9, as shown on said plan, two hundred seven and 21/100 (207.21) feet;

NORTHWESTERLY: by land now or formerly of Dutton, by three courses, as shown on said plan, fifteen and 13/100 (15.13) feet, eighty-seven and 81/100 (87.81) feet, and twenty-two and 20/100 (22.20) feet; and

SOUTHWESTERLY: by Lot 7, as shown on said plan, two hundred eight and 33/100 (208.33) feet.

Containing 25,863 square feet of land, according to said plan.

Also another certain parcel of land situated in Acton, Middlesex County, Massachusetts, being shown as Parcel P on a plan entitled, "Plan of Land in Acton, Mass., showing Parcels to be conveyed to abutting property owners," by Acton Survey & Engineering, Inc., dated January 15, 1970, recorded with said Deeds in Book 11833, Page End, to which plan reference may be had for a more particular description.

Containing 6,462 square feet of land, and being Parcel P as shown on said plan however otherwise bounded, measured or described.

Said premises are conveyed subject to and with the benefit of easements, restrictions and agreements of record, if any there be, insofar as the same are now in force and applicable.

Being the same premises to me conveyed by Deed of Richard E. Kodzis, et ux, dated October 29, 1990 and recorded with Middlesex South District Registry of Deeds in Book 20851, Page 392.

PROPERTY ADDRESS: 16 Henley Road, Acton, Middlesex County, MA 01720

Executed as a sealed instrument this 8th day of January, 19 92

DEBORAH ANGELEY

The Commonwealth of Massachusetts

MIDDLESEX, January 8, 19 92

Then personally appeared the above named

DEBORAH ANGELEY

and acknowledged the foregoing instrument to be her free act and deed,

Before me, Sherrill R. Gould
SHERRILL R. GOULD, Notary Public - ~~MIDDLESEX~~
My commission expires 7/17/ 19 92

EXHIBIT B
North Acton Treatment Corporation Easement Deed – 10B Henley Road



10A + 10B HENLEY RD, LOTS E & F, ACTON

EASEMENT DEED

Hawthorne Homes, LLC, a Massachusetts limited liability company with its usual place of business at 530 Great Road, Acton, Massachusetts

for consideration paid, and in full consideration of One (\$1.00) Dollar

grants to North Acton Treatment Corporation, a Massachusetts corporation with its usual place of business at 530 Great Road, Acton, Massachusetts

with quitclaim covenants

a perpetual right and easement over, under and upon those areas on Lot E and Lot F shown as "Sewer Easement" on a plan of land entitled, "Plan of Land in Acton, Massachusetts (Middlesex County) For: North Acton Treatment Corp., Scale: 1" = 30', February 27, 2012", prepared by Stamski and McNary, Inc., 1000 Main Street, Acton, Massachusetts, which plan is recorded with the Middlesex South District Registry of Deeds herewith, to install, maintain, operate, repair, remove and replace sewer pipes and appurtenant structures.

plan # 126 of 2012

The Grantee, by the recording of this Easement, does hereby agree to be responsible and pay for any and all expenses associated with any and all work done within the easement area and for the maintenance of same. The Grantee hereby agrees to indemnify and hold the Grantor, Grantor's successors in interest and assigns harmless on account of any injury or liability arising out of the use by Grantee, it's agents, servants, and employees.

GRAHAM & GRAHAM, P.C.
ATTORNEYS AT LAW
6 SCHOOL STREET
ACTON, MA 01720

EXHIBIT C
Plan of License Area and NATC Easement Area

Being a portion of the premises conveyed to the Grantor by deed dated August 23, 2011 recorded with said Deeds in Book 57335, Page 518.

WITNESS my hand and seal this 27th day of February, 2012.

Hawthorne Homes, LLC

By: Kirk Ware, Manager
Kirk Ware, Manager

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 27th day of February 2012, before me, the undersigned notary public, personally appeared Kirk Ware proved to me through satisfactory evidence of identification, which was: personally known to me to have the identity claimed; or examination of Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager and Authorized Signatory for Hawthorne Homes, LLC, a Massachusetts limited liability company.

Joanne Martin
Notary Public

My Commission Expires:
[apply seal]



NOTES:

- 1.) THIS PLAN IS BASED ON THE REFERENCED PLANS AND AN ON THE GROUND SURVEY. THE CERTIFICATION HEREON IS INTENDED TO MEET THE REQUIREMENTS OF THE REGISTRY OF DEEDS ONLY, AND IS NOT CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN, OR AS TO THE EXISTENCE OF UNRECORDED EASEMENTS. OWNERSHIP OF ADJUTING PROPERTIES IS FROM CURRENT ASSESSOR'S RECORDS.
- 2.) THE PURPOSE OF THIS PLAN IS TO DELINEATE THE SEWER EASEMENT.

RECORD OWNERS

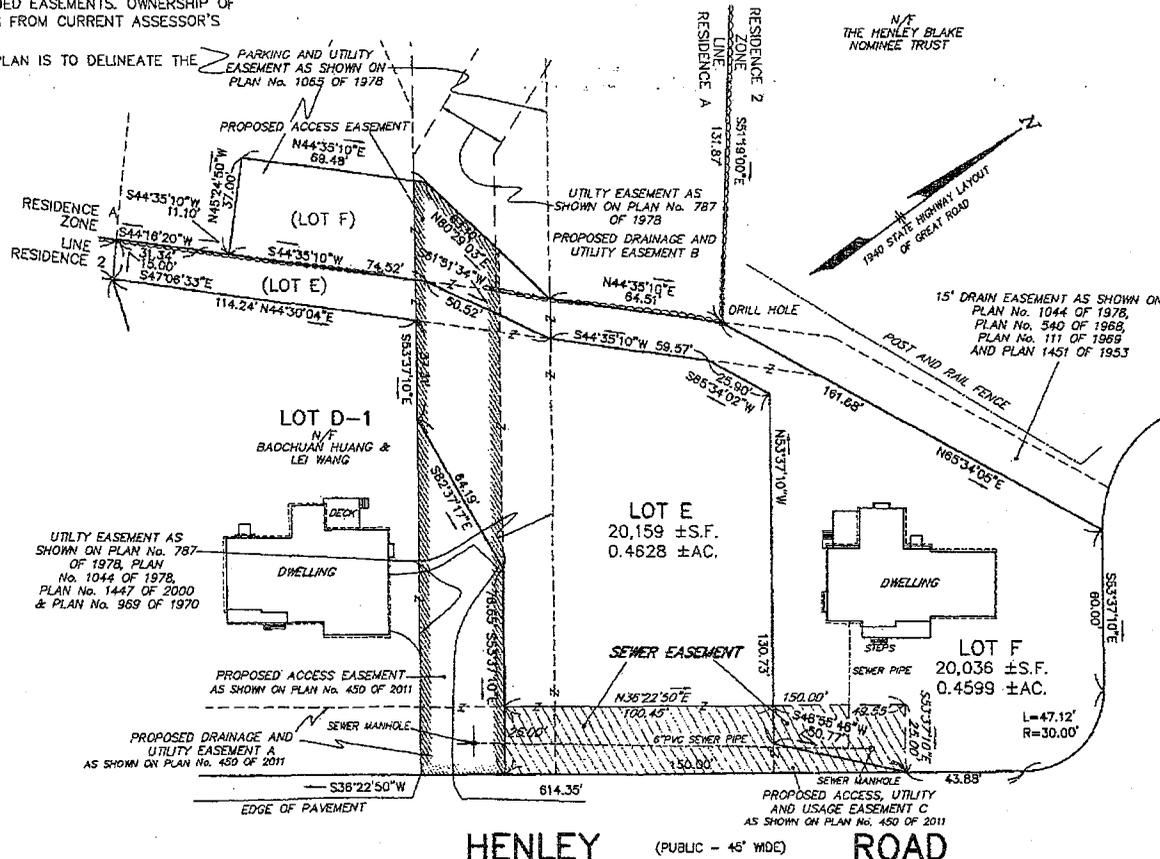
HAWTHORNE HOMES, LLC
530 GREAT ROAD
ACTON, MA 01720

REFERENCE

MIDDLESEX REGISTRY OF DEEDS
SOUTH DISTRICT
DEED BOOK 58256 PAGE 413
DEED BOOK 57335 PAGE 519
PLAN No. 1451 OF 1953
PLAN No. 111 OF 1989
PLAN No. 787 OF 1978
PLAN No. 788 OF 1978
PLAN No. 1447 OF 2000
PLAN No. 450 OF 2011

ZONING DISTRICT

RESIDENCE A
RESIDENCE 2
GROUNDWATER PROTECTION DISTRICT
ZONE 4



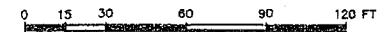
HENLEY ROAD (PUBLIC - 45' WIDE)

PLAN OF LAND
IN

ACTON, MASSACHUSETTS
(MIDDLESEX COUNTY)

FOR: NORTH ACTON TREATMENT CORP.
SCALE: 1"=30' FEBRUARY 27, 2012

STAMSKI AND McNARY, INC.
1000 MAIN STREET ACTON, MASSACHUSETTS
ENGINEERING - PLANNING - SURVEYING



(4573EASE1.dwg) SM-4366

Middlesex Registry of Deeds,
Southern District
Cambridge, Massachusetts
Plan No. 126 of 2012
Rec'd 3-1-2012
at 1:12 PM

Attest
[Signature]
Register

I CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE LINES OF EXISTING OWNERSHIP, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF OWNERSHIP OR FOR NEW WAYS ARE SHOWN; AND THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

27 FEB 2012
DATE

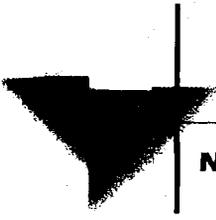
[Signature]
REGISTERED PROFESSIONAL LAND SURVEYOR



126 OF 2012

EXHIBIT D

Letter of North Acton Treatment Corporation to Richard Tracy, dated June 18, 2012



NORTH ACTON TREATMENT CORPORATION

June 18, 2012

Richard Tracy
16 Henley Road
Acton, MA 01720

Re: Sewer Connection

Dear Rick:

This letter is to confirm that North Acton Treatment Corp., owner of an easement on Lot 10B Henley Road has agreed to provide you with access to that easement from Henley Road via the manhole located on Lot 10B.

Please let me know if you need any further information.

Very truly yours,

NORTH ACTON TREATMENT CORPORATION

Kirk Ware
Treasurer

KW/hr

**LICENSE AGREEMENT
FOR THE LAYING AND INSTALLATION
OF A SANITARY SEWER PIPE
IN A PORTION OF HENLEY ROAD, ACTON, MASSACHUSETTS**

This is an agreement (the "License" or "Agreement") entered into this 20th day of August, 2012, by and between the Town of Acton, a duly organized Massachusetts municipal corporation with a mailing address of Town Hall, 472 Main Street, Acton, MA 01720, acting by and through its Board of Selectmen (the "Town"), and Richard W. Tracy and Susan M. Tracy, husband and wife as tenants by the entirety with a mailing address of 16 Henley Road, Acton, MA 01720 (collectively, the "Licensee").

WHEREAS, the Licensee owns a parcel of land, including a residence, located at 16 Henley Road, Acton, Massachusetts and more particularly described in a deed to the Licensee recorded with the Middlesex South Registry of Deeds (the "Registry") in Book 21690, Page 287 (the "Deed"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "Property");

WHEREAS, the Licensee wishes to install sanitary piping to connect the residence at the Property to the North Acton Treatment Corporation ("NATC") wastewater treatment plant located at Nagog Park in Acton (the "Treatment Plant") via a portion of Henley Road (the "License Area") and an easement ("NATC Easement") held by NATC that burdens a portion of the land (the "NATC Easement Area") located at 10B Henley Road in Acton ("10B Henley Road");

WHEREAS, such NATC Easement is reflected in an Easement Deed from the owner of 10B Henley Road, Hawthorne Homes, LLC, to NATC that is recorded with the Registry in Book 58597, Page 135, and an accompanying Plan recorded as Plan 126 of 2012, copies of which are attached hereto as Exhibit B and Exhibit B-1, respectively;

WHEREAS, on November 23, 1959 at a Special Town Meeting of the Town of Acton, it was voted to accept Henley Road as a Town Way as shown on a Plan filed with the Town Clerk;

WHEREAS, the License Area and the NATC Easement Area are shown on a plan attached hereto as Exhibit C;

WHEREAS, the Licensee has received written permission from NATC to access the NATC Easement through a manhole located at 10B Henley Road, such written permission being set forth in a letter of NATC to Richard Tracy, dated June 18, 2012, a copy of which is attached hereto as Exhibit D;

WHEREAS, the Licensee has requested that the Town of Acton grant it a license to use the License Area for purposes of laying the aforementioned sanitary piping and assuming the obligations of maintenance, repair and replacement of such piping if the need arises; and

WHEREAS, in the interest of public health and safety, the Town is willing to permit the Licensee to use the License Area for such purposes, but only upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Town and the Licensee agree as follows:

1. The Town hereby grants a license to the Licensee, its agents, contractors, employees, and invitees, to enter upon and use the License Area for the purpose of laying and installing sanitary piping from the Property along Henley Road to connect the residence at the Property with existing sanitary piping owned by NATC accessible via a manhole at 10B Henley Road. The purpose of the License is to permit NATC to provide sanitary treatment services to the Licensee with respect to the residence at the Property.
2. This License shall commence upon its execution by the Town and the Licensee for the specific and limited purposes stated herein and shall continue for one (1) year (the "Initial Term"). After the expiration of the Initial Term, absent a notice of termination pursuant to Section 3 below, the term shall automatically renew for successive periods of one (1) year each.
3. At any time after the execution hereof, the Town and the Licensee shall each have the right to terminate this License for any or no stated reason by written notice to the other party. The effective date of such termination shall be one hundred eighty (180) days from the date of the notice of termination, regardless of any then effective renewal term. Notwithstanding any other provision of this License to the contrary, the parties intend that this Agreement constitutes a revocable license, and no interest in real property is created hereby. The Town does not hereby dedicate the License Area to public use by virtue of the terms hereof.
4. Upon termination of this License by either party, the Licensee shall, on or before the effective date of termination, remove the sanitary pipe as well as any additional equipment owned by the Licensee and located within the License Area. In the event that the Licensee's actions hereunder disturb any areas of the License Area or other property owned by the Town of Acton, the Licensee shall promptly restore and repair such disturbed areas to substantially the same condition as obtained immediately prior to such Licensee actions. If the Licensee shall fail to perform its obligations as set forth in this paragraph 4, then upon 30 days' written notice to the Licensee (or immediately upon oral

or written notice in an emergency), the Town may perform such obligations at the expense of the Licensee. Amounts due hereunder from the Licensee to the Town shall be paid within thirty (30) days after Licensee's receipt of an invoice therefor.

5. It is agreed that during the term of this License, the Licensee shall maintain, repair and replace as necessary the sanitary piping authorized to be laid and installed hereunder so that such sanitary piping at all times is in good condition and repair. Further, the Licensee shall not erect or permit any structures or improvements to be placed upon, and nor make or permit any use of the License Area other than for such uses expressly permitted in this License.
6. By granting this License, the Town does not represent or warrant that the License Area is appropriate, safe or suitable for the proposed use, nor does the Town make any warranties or representations regarding its title to and rights in the License Area. The Licensee has or shall obtain any and all necessary governmental permits, licenses and approvals including but not limited to any such permits and approvals required under the Specifications for Regulating Construction within Public Ways of the Town of Acton, at its sole cost and expense for the use of the License Area. In no event shall any provision of this License be interpreted to require the Town to grant any permits or approvals to the Licensee for the sanitary piping or the use of the License Area nor shall any provision require the Town to compromise its permitting authority in any way.
7. The Town does not grant any rights to the Licensee hereunder to the extent the Commonwealth of Massachusetts requires the Licensee to obtain approval for the use and operation of the sanitary piping. This License and the rights granted to the Licensee herein shall be limited to those rights belonging to the Town and specifically granted to the Licensee herein.
8. During the exercise of the rights hereby granted, the Licensee shall at all times conduct itself so as not to unreasonably interfere and to minimize any reasonable interference with the use of any Town property by the Town or the public, and the Licensee shall observe and obey applicable laws, statutes, ordinances, regulations and permitting or licensing requirements. The use of the License Area by the Licensee shall be subject and secondary to the use of Henley Road by the Town, the Commonwealth of Massachusetts and the general public. The Licensee shall repair within 24 hours, to the reasonable satisfaction of the Town, any damage caused to the License Area or other property of the Town or the Commonwealth in exercising its rights under this License.
9. The Licensee hereby represents and warrants, and it is hereby made a condition of this License, that the use of the License Area by the Licensee shall not result in the reportable release of any oil or hazardous materials, as those terms are defined in the Massachusetts

Contingency Plan, 310 CMR 40.000, et seq. In the event of any breach of the foregoing warranty and condition by the Licensee, the Town shall, in addition to the right to terminate this License and seek damages, have the benefit of the indemnity provisions set forth in Section 10 and injunctive relief.

10. The Licensee, for itself and its agents, contractors, employees, and invitees, hereby releases and shall indemnify, defend and save harmless the Town, its officers, agents and employees, from and against all demands, claims, actions, damages, costs, expenses, losses or liabilities whatsoever in any manner resulting from or arising out of the use of the License Area by and any actions in the License Area of the Licensee and its agents, contractors, employees and invitees, except to the extent that such liability results from the gross negligence or willful misconduct of the Town, its employees, agents or contractors. This provision shall survive the termination of this License.
11. The Licensee shall procure and maintain at its expense, at all times during the term of this License Agreement and for one (1) year thereafter, public liability insurance, including personal injury and property damage, in amounts of \$1,000,000.00 combined single limit, and \$2,000,000.00 in the aggregate against all claims and demands of any injury to person or property which may occur or be claimed to have occurred on the property of the Town as the result of the use of the License Area by and actions in the License Area of the Licensee and its agents, contractors, employees and invitees. The Town may increase such limits from time to time upon notice to the Licensee. The Town shall be designated as an additional insured party in such policy. Any such insurer must be licensed in Massachusetts and reasonably acceptable to the Town. During all periods of construction, installation, removal or repair of the sanitary piping as herein provided, the Licensee shall also maintain workers compensation insurance in statutory amounts as required by Massachusetts law. The Licensee shall, before entry upon the License Area for the purposes herein set forth, furnish the Town (to the address listed in Section 13) with a valid certificate of all such insurance reasonably satisfactory to the Town. Such policies shall specify that they are not cancelable except upon twenty (20) days' prior written notice to the Town.
12. The Licensee agrees that in the event a public health, safety or security emergency should arise as determined at the sole discretion of the Town, the Town, its officers, agents and employees, shall have the right to require the temporary suspension of the Licensee's use of the License Area.
13. For the purposes of this License, the parties shall be deemed duly notified in accordance with the terms and provisions hereof if written notices are mailed by certified mail, return receipt requested, or faxed (with proof of delivery) to the following addresses:

If to the Town:

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

If to the Licensee:

Richard W. Tracy and Susan M. Tracy
16 Henley Road
Acton, MA 01720

14. The rights and obligations hereunder shall be binding upon and shall inure to the benefit of (i) the Licensee and the Licensee's successors and assigns as owners of the Property and (ii) the successors and assigns of the Town.
15. This License contains all the agreements of the parties with respect to the subject matter thereof and supersedes all prior agreements and dealings between them with respect to such subject matter.
16. This License shall be construed as a sealed Massachusetts instrument. No provision of this License shall be deemed to have been waived by either party unless such waiver is in writing and is signed by the party to be charged.
17. If any term or provision of this License, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, inoperative or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, inoperative or unenforceable, shall not be affected thereby; it shall not be deemed that any such invalid, inoperative or unenforceable provision impacts the consideration for this License, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.
18. Modifications or amendments to this License shall be in writing and duly executed by both parties hereto to be effective.
19. The Licensee and the Town mutually agree to execute herewith, in triplicate, a Notice of License in recordable form with respect to this License, which shall be recorded forthwith at the Licensee's sole cost and expense with the Middlesex South Registry of Deeds.

20. The Licensee shall be solely responsible for all costs and expenses associated with its obligations hereunder.
21. The Licensee agrees that it shall enter the License Area at its own risk, and the Town shall not be liable to the Licensee for any injury or death to persons entering the License Area pursuant to the License, or loss or damage to vehicles, equipment or other personal property of any nature whatsoever of the Licensee, or of anyone claiming by or through the Licensee, that is brought upon the License Area pursuant to the License.
22. Notwithstanding anything set forth herein to the contrary, the Licensee shall not undertake any work within the License Area until first obtaining a sewer connection permit from the Town's Board of Health and a street cut permit from the Town's Department of Public Works, both in accordance with all standards and conditions that the applicable Town department deems necessary.
23. The Licensee shall not commence any work within the public way until first posting security, in an amount and form satisfactory to the Town's Director of Public Works, to secure the restoration of the roadway and the area to its pre-existing condition.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Town has caused its duly authorized representatives to enter into this License Agreement and the Licensee has agreed to enter into this License Agreement on the date and year first above written.

LICENSEE:

RICHARD W. TRACY

SUSAN M. TRACY

TOWN OF ACTON
By its Board of Selectmen

Pamela A. Harting- Barrat, Chair

Janet K. Adachi, Member

David Clough, Member

Mike Gowing, Member

John Sonner, Member