

RESTRICTIVE COVENANT

In consideration of the approval by the Planning Board of the Town of Acton, Massachusetts (hereinafter referred to as the Board), of a plan of land located in Acton, Middlesex County, Massachusetts entitled Preliminary Plan of Southeast Kelly's Corner Lots For 394 Massachusetts Avenue, LLC Location Of Site Massachusetts Avenue Town of Acton Middlesex County, MA, dated _____, revised _____, By Bohler Engineering, approved by the Board on _____ and the waiver by the Board of a bond or other security for the construction of the ways and the installation of certain services shown on said plan, in compliance with the Town of Acton, Massachusetts (the "Town") Subdivision Rules and Regulations, last amended _____; Notca, LLC; 394 Massachusetts Avenue, LLC; Anna Ludwig, Trustee of Parker Lane Investment Trust, (individually and collectively the "Developer"), having its usual place of business in Waltham, MA, its successors and assigns, hereby covenant and agree with the Board and the Town as follows:

1. The undersigned Developer is the owner in fee simple absolute of all the land included in the subdivision and that there are no mortgages of record or otherwise on any of said land, except for those described below, and that the present holders of said mortgages have assented to this covenant prior to its execution by the Developer.
2. The Developer shall not sell or convey any lot in the subdivision or erect or place any permanent building on any lot until the construction of ways and installation of municipal services necessary to adequately serve such lot has been completed in accordance with the following:
 - a) The Subdivision Control Law and the Acton Planning Board's Rules and Regulations governing this subdivision.
 - b) The certificate of approval and the conditions of approval specified therein, issued by the Planning Board, dated _____.
 - c) The definitive plan as approved and as qualified by the certificate of approval.
 - d) Other document(s), namely:

3. However, a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell or convey any lot, subject only to that portion of this covenant which provides that no lot be sold or conveyed or built upon until ways and services have been provided to serve such lot.
4. The Developer will expeditiously and diligently proceed to construct the ways shown on the aforesaid plan and in the event that the Board concludes, in its sole discretion, that the Developer is not so constructing such ways, the Developer shall provide additional security other than this covenant sufficient in the Board's opinion for the construction and completion of such ways and services as shown on the aforesaid plan or for a portion thereof. Such additional securities shall comply with the requirements of the Town's Subdivision Rules and Regulations, provided, however, that the Board shall determine the date by which the work, for which additional security must be posted, shall be completed.
5. This covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the Developer and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon the land.

6. Nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board.
7. Particular lots within the subdivision shall be released from this covenant upon the recording of a certificate of performance executed by the Planning Board and enumerating the specific lots to be released.
8. The Developer agrees to record this covenant with the Middlesex County Registry of Deeds, forthwith. Reference to this covenant shall be entered upon the definitive subdivision plan as approved.
9. A deed of any part of the subdivision in violation of the covenant shall be voidable by the grantee prior to the release of the covenant; but not later than three (3) years from the date of such deed.
10. This covenant shall be executed before endorsement of the approval of the definitive plan by the Planning Board and shall take effect upon such endorsement.
11. Upon final completion of the construction of ways and installation of municipal services as specified herein, on or before April 1, 2024, the Planning Board shall release this covenant by an appropriate instrument, duly acknowledged. Failure to complete construction and installation within the time specified herein or such later date as may be approved by the Planning Board, shall constitute reason for rescission by the Board of the approval of the plan.
12. Nothing herein shall prohibit the applicant from varying the method of securing the construction of ways and installation of municipal services from time to time or from securing by one, or in part by one and in part by another of the methods described in M.G.L., Chapter 41, Section 81-U, as long as such security is sufficient in the opinion of the Planning Board to secure performance of the construction and installation.
13. The land included in the subdivision is encumbered by and subject to the following mortgages which, however, are subordinated to this covenant:
 - a) Mortgage granted by the from Developer to Brookline Bank dated May 19, 2011, recorded with Middlesex South District Registry of Deeds in Book 56882, Page 356, as amended by Amendment dated March 8, 2012, recorded in Book 58649, Page 595;
 - b) Mortgage granted by the Developer to Brookline Bank dated August 20, 2013, recorded with Middlesex South District Registry of Deeds in Book 62487, Page 483;
 - c) Mortgage granted by the Developer to Brookline Bank dated August 12, 2014, recorded with Middlesex South District Registry of Deeds in Book 64071, Page 273; and
 - d) Mortgage granted by Developer to Brookline Bank dated June 23, 2016, recorded with Middlesex South District Registry of Deeds in Book 67486, Page 17.

IN WITNESS WHEREOF, the mortgage holder(s) assents to this covenant and agrees to subordinate said mortgage(s) to this covenant, signed under seal as of the _____ day of _____, 2016.

MORTGAGE HOLDER

BROOKLINE BANK

By _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 20__

Then personally appeared before me, the undersigned notary public, _____ as _____ of Brookline Bank, proved to me through satisfactory evidence of identification, which was _____, 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, as aforesaid, as _____ of Brookline Bank.

Notary Public
My commission expires: _____

IN WITNESS WHEREOF, the Developer(s) has executed this Restrictive Covenant under seal as of the _____ day of _____, 20____.

DEVELOPER(S)

NOTCA, LLC

By: _____
Vincent Cuttone, Manager

394 Massachusetts Avenue, LLC

By _____
Vincent Cuttone, Manager

Anna Ludwig, Trustee of Parker Lane Investment Trust

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 20____

Then personally appeared before me, the undersigned notary public, Vincent Cuttone, in his capacity as Manager of Notca, LLC, and as Manager of 394 Massachusetts Avenue, LLC, proved to me through satisfactory evidence of identification, which was _____, 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 of Notca, LLC and as Manager of 394 Massachusetts Avenue, LLC, as aforesaid.

Notary Public
My commission expires:_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 20____

Then personally appeared before me, the undersigned notary public, Anna Ludwig, Trustee of Parker Lane Investment Trust, proved to me through satisfactory evidence of identification, which was _____, 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, as Trustee of Parker Lane Investment Trust, as aforesaid.

Notary Public
My commission expires:_____

Approved and accepted by the Acton Planning Board:

_____ Date: _____