

100 ORCHARD AVENUE, WESTON

16 pages
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PRESERVATION RESTRICTION

DAVID K. BIDDLE, BRUCE BIDDLE and CHRISTOPHER T. CARLSON, Executors under the Will of Barbara F. Biddle (Middlesex County Probate Court No. 98P1725EP) and NANCY B. BATES, BARBARA GALLAGHER, SUSAN DZYACKY, BRUCE BIDDLE and DAVID K. BIDDLE, Trustees of the BARBARA F. BIDDLE 1995 IRREVOCABLE TRUST under an instrument dated December 18, 1995 and recorded with the Middlesex County Registry of Deeds at Book 25925, Page 362, of Weston, Middlesex County, Massachusetts (collectively, together with their successors and assigns, hereinafter the "Grantor") hereby grants to WESTON FOREST AND TRAIL ASSOCIATION, INC., a Massachusetts corporation organized under Massachusetts General Laws, Chapter 180, having a mailing address of 266 Glen Road, Weston, Massachusetts (the "Grantee"), a preservation restriction ("this Restriction") for the purpose of retaining the premises at 100 Orchard Avenue, Weston, Middlesex County, Massachusetts, more fully described in Exhibit A attached hereto, predominately in its condition as of the date hereof.

W I T N E S S E T H:

WHEREAS, the Grantor intends to make a qualified preservation restriction contribution under Internal Revenue Code Section 170 to the Grantee for the purposes of retaining the premises predominately in its present condition pursuant to and under the authority of Massachusetts General Laws Chapter 184, Section 31 through 33;

WHEREAS, the Grantee was validly established pursuant to Massachusetts General Laws Chapter 180, whose purposes include conservation of land and water areas in Weston, Massachusetts;

WHEREAS, the Grantor and Grantee seek to create this Restriction for the purpose of protecting a significant example of mid-eighteenth century Georgian architecture, relocated to these premises in the 1920s from Newmarket, New Hampshire, and for the purpose of protecting the preservation and conservation values of its immediate setting, including natural habitats of wildlife, plants and similar ecosystems and of preserving existing conditions on the premises pursuant to clearly delineated preservation policies of the Town of Weston and the Commonwealth of Massachusetts, as evidenced by the approvals by the Selectmen of the Town of Weston and the Executive Director and Clerk of the Massachusetts Historical Commission affixed hereto;

WHEREAS, this Restriction will yield a significant public benefit due to the uniqueness of the Premises (as hereinafter defined), the intensity of past, present, and projected development in the area surrounding the Premises, the consistency of this Restriction with state and local preservation programs in and around Weston, and the increased opportunity for the preservation of the scenic, architectural and historic values and significance of the Premises by insuring that a greater portion of Premises will remain in its present condition; and

attorneys: Doherty, Ciechanowski,
Dugan & Cannon, PC
124 Washington Street, Suite 202
Foxboro, MA 02035

OK. 30247-310

WHEREAS, the Grantor desires to forego development permitted under the Zoning By-Laws of the Town of Weston on the Premises, which is located in a Residential Zoning District.

NOW THEREFORE, the Grantor hereby specifies, provides and covenants with the Grantee and grants as follows:

1. This Restriction hereby granted shall be perpetual and the right to enforce the same shall be vested in, and managed and controlled by, the Grantee or, should Grantee cease to exist, by a successor agency, otherwise by the Town of Weston.

2. The land with the buildings thereon affected by this Restriction is the premises shown as Lot F1 on a plan entitled "Definitive Flexible Subdivision Plan of Biddle Property, Weston, MA" prepared by MetroWest Engineering, Inc., 75 Franklin Street, Framingham, MA 01702, dated February 16, 1998, which plan is recorded with the Middlesex County Registry of Deeds as Plan No. 579 of 1999 at Book 30247, Page 323 and more particularly described in Exhibit A attached hereto (the "Premises").

3. The Grantor, their successors and assigns, hereby covenants to forbear from performing or willfully permitting others to perform, except as hereinafter specifically provided in Paragraph 4 hereof, the following activities:

(a) Construction or placing of any buildings, improved roads, mobile homes, signs, billboards or other advertising, or other structures on or above ground on that portion of the Premises shown as "Non-Buildable Area" on the plan attached hereto as Exhibit B (the "Non-Buildable Area").

(b) Dumping or placing of soil or other substance or material as land fill, or dumping or placing of trash, waste or unsightly or offensive materials in the Non-Buildable Area;

(c) Removal or destruction of trees, shrubs or other vegetation on or from the Non-Buildable Area;

(d) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance or natural deposit from the Premises, in such manner as to permanently affect the surface of the land in the Non-Buildable Area;

(e) Other surface use of the Non-Buildable Area;

(f) Activities detrimental to drainage, flood control, water or soil conservation and preservation or erosion control in the Non-Buildable Area;

(g) Construction, alterations or repair which alter or adversely affect the appearance, materials, workmanship or structural stability of the exterior features of the north and west elevations of the house located on the Premises (the "Biddle House") including, but not limited to, the roof material, windows, doors, clapboards and any other architectural detail; and

(h) Construction, alterations or repair which alter or adversely affect the appearance, materials, workmanship or structural stability of the following interior features of the Biddle House:

- (1) paneling, doors, fireplaces, hearths and tile surrounds, in each case on the fireplace walls only in rooms numbered 1, 3, 4, 5, 6, 8, 9 and 10 on Exhibit C attached hereto;
- (2) wide pine flooring in rooms numbered 1, 2, 3, 5, 6, 7, 8 and 9 on Exhibit C;
- (3) staircase and hand painted French wallpaper in room numbered 2 on Exhibit C;
- (4) staircase and staircase railing in room numbered 7 on Exhibit C;
- (5) paneling and doors on all walls in room numbered 6 on Exhibit C; and
- (6) paneling and doors on all walls in room numbered 4 on Exhibit C with the exception of paneling on south wall.

(i) Any construction, alteration, repair and/or maintenance to the Non-Buildable Area, the north and west elevations of the Biddle House or the interior features of the Biddle House as described in Sections 3(g) and (h) above, shall be done in accordance with the guidelines as set forth in the Secretary of Interior's Standards for the Treatment of Historic Properties for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36 C.F.R. 67 and 68) as these may be amended from time to time and which are incorporated into this preservation restriction by reference.

4. The Grantor, for themselves and their successors and assigns, shall have and hereby reserve unto themselves to be exercised in the sole discretion of Grantor, and their successors and assigns, as the case may be, and there is hereby excluded from this Restriction the following rights and easements:

- (a) To plant, trim, cut and remove selectively bushes, shrubs, trees and other vegetation (i) for purposes of proper horticultural, forestry or landscape practices, (ii) to maintain and improve the scenic view, and (iii) to implement disease prevention measures;
- (b) To use the Premises for outdoor recreation;
- (c) To cultivate and harvest crops and flowers, to plant and maintain trees, shrubs and the mowing of grass;
- (d) To install, maintain, repair, replace and use such utility lines as may be reasonably necessary or appropriate to serve buildings owned by Grantor, their successors and assigns, and any excavation or construction necessary to undertake the same, provided that the surface of the land on the Premises is restored to its prior condition following such activity;
- (e) Subject to the requirements of Massachusetts General Laws, Chapter 131, Section 40, to install and maintain in perpetuity water or flood control devices necessary in the judgment of the Grantor or their successors and assigns for the development and use of other land or the Premises;
- (f) To add extensions or additions to the Biddle House provided such extensions or additions are not located in the Non-Buildable Area and further provided that the roof-lines of such extensions or additions extend no higher than the present roof-line of the Biddle House;
- (g) To paint the walls and doors in room numbered 4 on Exhibit C;
- (h) To convert the closet in room numbered 5 on Exhibit C to a bathroom with access from either or both room numbered 5 and room numbered 2;
- (i) To remove the incursion on the north wall of room numbered 10 and to restore the original wall in connection therewith;
- (j) To install outdoor lighting on the Premises appropriate to the residential character of the neighborhood, provided that such lighting shall not adversely affect any abutting property owner;
- (k) To resurface the driveway located on the Premises and perform grading associated therewith;

(l) To restore the brick patio located immediately in front of the door located on the west elevation of the Biddle House and to perform grading associated therewith;

(m) To install walkways on the Premises and to perform grading associated therewith;

(n) To demolish or alter the porch at the south end of the Biddle House; and

(o) The following work shall not constitute construction, alteration or repairs which alter or adversely affect the appearance, materials, workmanship or structural stability of the protected areas of the Biddle House:

- (1) Installation of wood shingle roof covering on the north and west elevations of the Biddle House and the installation of asphalt or wood shingle roof coverings on all other areas;
- (2) Installation of insulation, provided that such work does not harm any protected paneling, tiles, floors or doors in the Biddle House;
- (3) Installation of screens, storm windows or storm doors;
- (4) Electrical re-wiring, provided no electrical fixtures are imbedded or attached to protected paneling or tile;
- (5) Replacement or installation of plumbing lines and fixtures, provided that such work does not harm any protected paneling, tiles, floors or doors in the Biddle House;
- (6) Replacement of furnaces, boilers, radiators and related plumbing, provided that such work does not harm any protected paneling, tiles, floors or doors in the Biddle House;
- (7) Installation of central air conditioning, provided that such work does not harm any protected paneling, tiles, floors or doors in the Biddle House;
- (8) Interior and exterior painting except no painting shall be done which would affect the wallpaper in Room 2 or the paneling or doors in Room 6;

- (9) Interior wallpapering except no wallpapering will be done which would affect the wallpaper in Room 2 or any protected paneling, tiles or doors;
- (10) Exterior scaffolding;
- (11) Removal of a window from the south wall in Room 6 and the installation of a door on such wall.

5. By hereby establishing said preservation restriction, the Grantor does not hereby grant either to said Grantee, except as set forth in Section 6 hereof, or to the public at large, any right to enter the Premises or any portion thereof.

6. Grantor hereby grants to Grantee an easement of access to the Premises, which easement shall be exercised in a reasonable manner, at reasonable times and upon reasonable notice, solely for the purpose of assuring compliance of the Premises with the restrictions hereunder. The rights hereby granted to Grantee shall be in addition to any other remedies available to the Grantee for the enforcement of the foregoing restrictions.

7. At the written request of Grantor, Grantee shall deliver to Grantor within thirty (30) days of its receipt of such request, a statement in recordable form stating whether proposed plans (delivered to Grantee no later than the date the request is received) or the Premises comply with this Restriction. If Grantee shall fail to deliver such statement within thirty (30) days of such request, such request shall be deemed to be approved, and in such event Grantee or Grantor may record a statement setting forth such approval. Grantee may also, in its reasonable discretion, grant written permission for any construction, alteration, addition, removal or any other use or activity by Grantor which is restricted by this Restriction. Such permission shall be in recordable form. The failure by Grantee to act within thirty (30) days of its receipt of a written request for permission shall be deemed to be approval of the entire request and, in such event, Grantee or Grantor may record a statement setting forth such approval.

8. This Restriction herein described is created pursuant to Massachusetts General Laws, Chapter 184, Sections 31 through 33 and shall be construed so as to comply with said provisions of law.

9. This Restriction is in gross and is not for the benefit or appurtenant to any particular estate. The burden of this Restriction hereby imposed shall run in perpetuity with the Premises and shall be binding upon all future owners of any interest therein.


10. The Grantee shall have the right at any time or times to take any reasonable action which, in its judgment, is appropriate to assure its right to enforce or assign this Restriction as herein provided, including, without limitation, the right to have said restriction approved by the Selectmen of the Town of Weston and the Executive

Director of the Massachusetts Historical Commission or similar agency of the Commonwealth of Massachusetts, and the right to file at the sole expense of Grantor notice of this restriction with the Middlesex Registry of Deeds.

11. The provisions of this Restriction shall be considered to be severable, and the revocation, termination or modification of any provision of this Restriction or its terms and conditions shall not affect the force, effect or validity of the provisions not so revoked, terminated or modified.

12. **Conditional Rights Requiring Approval of the Massachusetts Historical Commission.** The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the State Archaeologist of the Massachusetts Historical Commission (M. G. L. Chap. 9, Section 27C, 950 CMR 70.00).


IN WITNESS WHEREOF, the undersigned have set forth their hands and seals
this 28th day of November, 2001;



David K. Biddle, Executor



Bruce Biddle, Executor



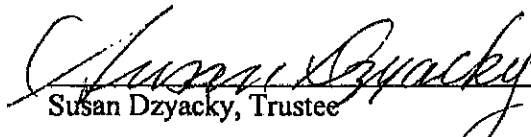
Christopher T. Carlson, Executor



Nancy B. Bates, Trustee



Barbara Gallagher, Trustee



Susan Dzyacky, Trustee



Bruce Biddle, Trustee



David K. Biddle, Trustee

COMMONWEALTH OF MASSACHUSETTS

BRISTOL COUNTY, SS

NOVEMBER 23

, 2001

Then personally appeared the above-named David K. Biddle and acknowledged the foregoing instrument to be his free act and deed, before me

Geoffrey Marshall
Notary Public

My commission expires: OCT. 13, 2006

Geoffrey Marshall

State of Connecticut
COMMONWEALTH OF MASSACHUSETTS

New London
County, SS

Stonington

November 21, 2001

Then personally appeared the above-named Bruce Biddle and acknowledged the foregoing instrument to be his free act and deed, before me

Ann Freeman

Notary Public

My commission expires: 4/30/04

Ann Freeman

ACCEPTANCE OF GIFT

The gift of the foregoing Conservation and Preservation Restriction is hereby found to be in the public interest and is hereby accepted this 28th day of November, 2001.

WESTON FOREST AND TRAIL ASSOCIATION, INC.

By: *George P. Bates*
Name: George P. Bates
Title: Treasurer

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

November 28, 2001

Then personally appeared the above-named George P. Bates, Treasurer as aforesaid and acknowledged the foregoing instrument to be the free act and deed of WESTON FOREST AND TRAIL ASSOCIATION, INC., before me

Craig A. Cichanowski
Notary Public CRAG A. CICHANOWSKI
My commission expires: 1/27/06

REQUIRED APPROVALS

A. The Town of Weston:

The undersigned, the Clerk of the Board of Selectmen of the Town of Weston, hereby certifies that the foregoing conservation and preservation restriction was duly approved as being in the public interest, pursuant to Massachusetts General Laws, Chapter 184, Section 32, by the Selectmen at a meeting held on January 8, 2002

[Signature]
Clerk of the Board of Selectmen
Town of Weston

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

January 8, 2002

Then personally appeared the above-named Douglas P. Gillespie, Clerk of the Board of Selectmen of the Town of Weston, and acknowledged the foregoing instrument to be his free act and deed, before me

Donna S. Vanduclo

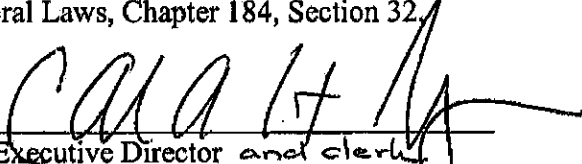
Notary Public

My commission expires: August 19, 2005

Donna Vanduclo

B. Approval by the Massachusetts Historical Commission

The undersigned Executive Director of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restriction has been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.


Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

suffolk , ss

December 19 , 2003

Then personally appeared the above-named Cara H. Metz
and acknowledged the foregoing instrument to be her free act and deed, before me

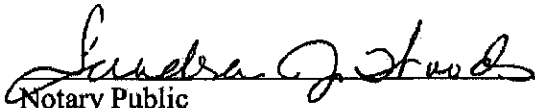
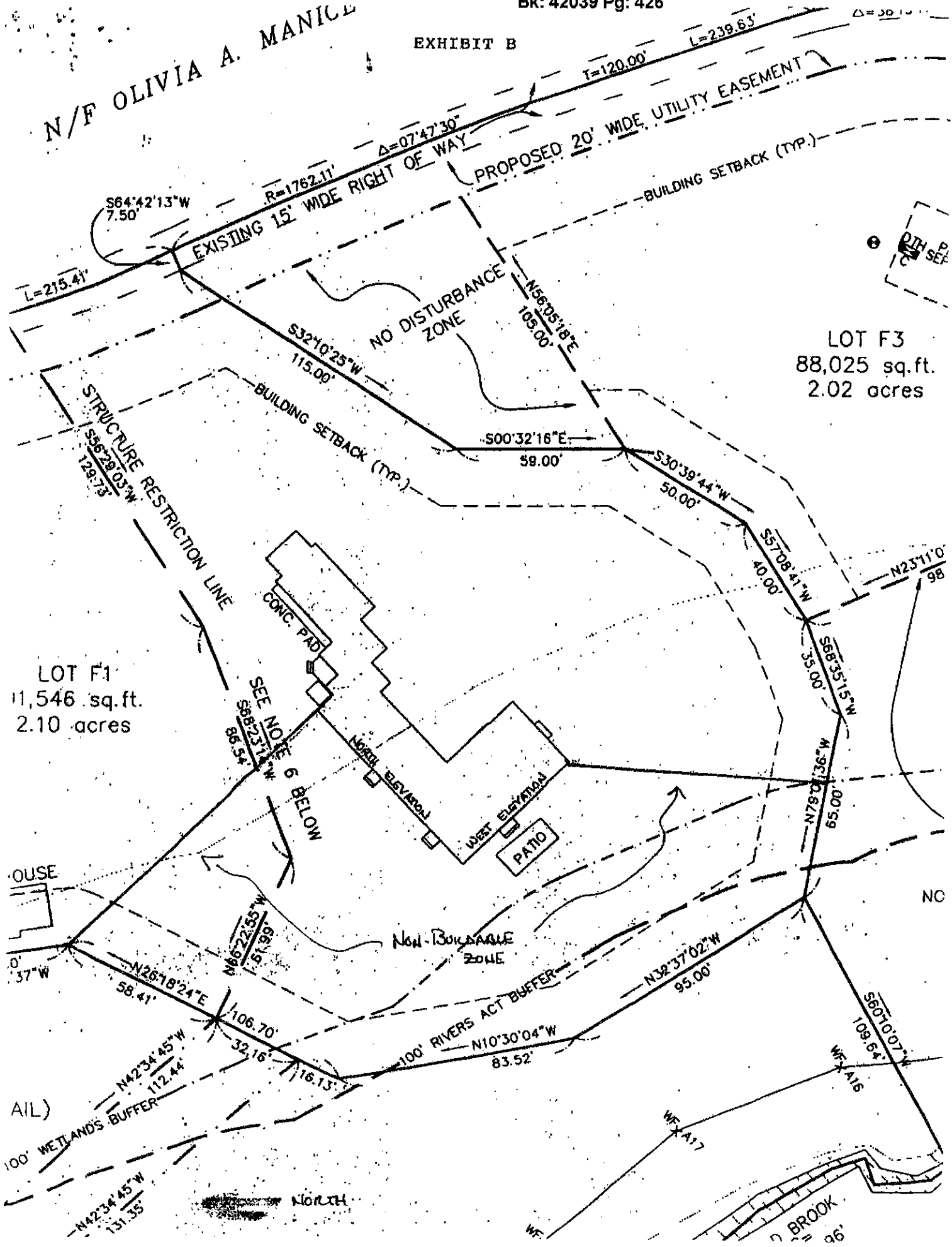

Notary Public
My commission expires: Jan 13, 2006
Sandra Woods

EXHIBIT A

The land with the buildings thereon in Weston, Middlesex County, Massachusetts known as Lot F1 as shown on a plan entitled "Definitive Flexible Subdivision Plan of Biddle Property, Weston, MA" prepared by MetroWest Engineering, Inc., 75 Franklin Street, Framingham, MA 01702 dated February 16, 1998 which plan is recorded with the Middlesex County Registry of Deeds as Plan No. 579 of 1999 at Book 30247, Page 323. Said Lot F1 contains 91,546 square feet, 2.10 acres, according to said plan.

EXHIBIT B

N/F OLIVIA A. MANIC



LOT F1
11,546 sq. ft.
2.10 acres

LOT F3
88,025 sq. ft.
2.02 acres

HOUSE

CONC. PAD
SEE NOTE 6 BELOW

NORTH ELEVATION
WEST ELEVATION
PATIO

Non-Buildable Zone

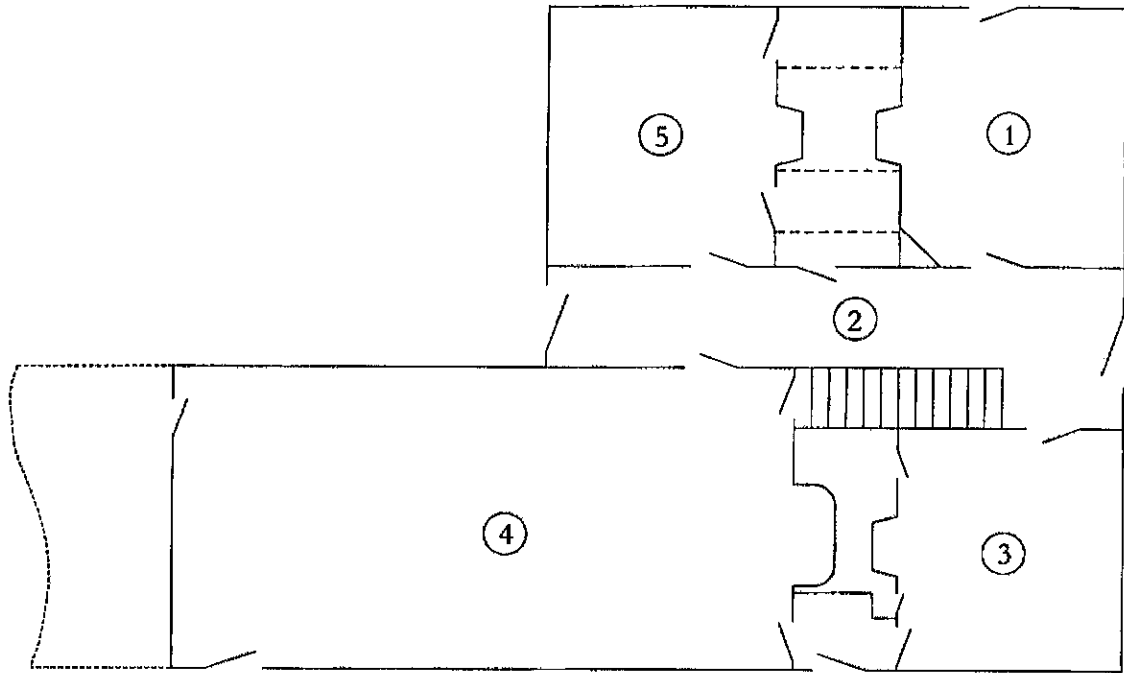
100' RIVERS ACT BUFFER
N10°30'04"W 83.52'

100' WETLANDS BUFFER
N42°34'45"W 112.44'

North

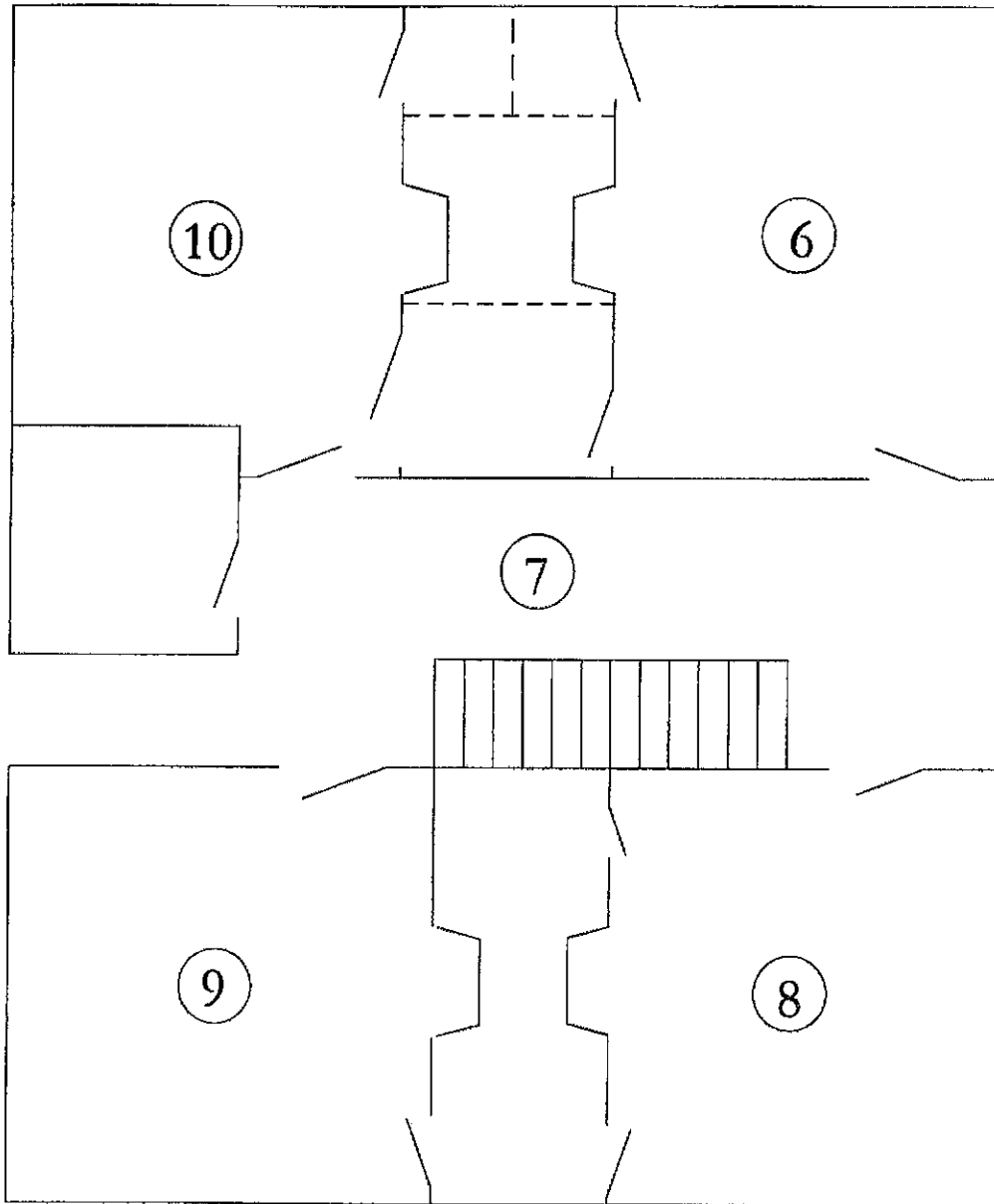
BROOK

EXHIBIT C



1st Floor: "WEST" Elevation

1st Floor: "NORTH" Elevation (Driveway)



2nd Floor: "WEST" Elevation

2nd Floor: "NORTH" Elevation (Driveway)

George C. Brown
Arch. Middlesex S. Register