

## MEMORANDUM

**TO:** Mill Creek Residential Trust  
**FROM:** Goulston & Storrs PC  
**DATE:** November 19, 2019  
**SUBJECT:** Town of Weston's Rights in Elliston Road

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Mill Creek Residential Trust (“**MCRT**”) intends to construct a residential development on approximately 62 acres of land located at 751 and 761 Boston Post Road in the town of Weston (the “**Town**”), Massachusetts (the “**Property**”). MCRT proposes to have the Town use Elliston Road, a public right of way in Weston, Massachusetts, for emergency access to the Property. As shown on the map attached hereto as Exhibit A, the existing paved Elliston Road (“**Elliston Road**”) runs from Boston Post Road northeasterly toward 751 Boston Post Road; however, there is a gap between Elliston Road and the property line of 751 Boston Post Road. You have asked us to research what rights the Town has in Elliston Road and the area between Elliston Road and 751 Boston Post Road. We found that the Town has a fee interest in Elliston Road, and has access easement rights over the area between the Property and Elliston Road, as further discussed below. In conducting our research, we relied solely on title documents available on the Massachusetts registry of deeds online database. This memorandum is not a certification of the state of title as to the Property or any portion thereof.

### Elliston Road – Public Way

The Town has a fee interest in Elliston Road pursuant to that certain Order of Taking filed June 19, 1989 with the Middlesex South Registry District of the Land Court (the “**Land Court**”) as Document No. 801169 and attached hereto as Exhibit B. The layout of Elliston Road, as described in the Order of Taking, is shown on that certain Subdivision Plan of Land in Weston recorded with the Land Court as Plan 14888Q (the “**Plan**”) and attached hereto as Exhibit C.

### Easement Rights

As shown on the Plan, Elliston Road does not directly abut the Property; the area between Elliston Road and the Property is labeled as “Road Easement” on the Plan. As further discussed below, the Town has easement rights in and to the (i) area labeled “Turnaround Easement” on the Plan (the “**Turnaround Easement**”) and (ii) eastern half of the area labeled as “Road Easement” on the Plan (the “**Access Easement**”). Pursuant to that certain Town vote and acceptance of easement filed on November 6, 1989 with the Land Court as Document No. 810328 and attached hereto as Exhibit D, the Swiedler Building Company, Inc. granted the Town “all such rights and easements as the grantor may lawfully grant, in and with respect to the areas of land situated in

said Weston shown and designated as “Elliston Road,” Turnaround Easement” and “Road Easement” on Land Court Plan No. 14888Q, to maintain, repair and use the same for all purposes for which streets and ways are now or may hereafter customarily be used in said Weston, in common with and subject to the rights of others lawfully entitled thereto.”<sup>1</sup> The approximate location of the Turnaround Easement, Access Easement and the Town’s fee interest in Elliston Road, pursuant to the Order of Taking, are shown on the map attached hereto as Exhibit E.

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<sup>1</sup> Note that at the time of this easement grant, the Swiedler Building Company, Inc. owned Lot 32 (as shown on the Plan), which lot includes the Access Easement and the Turnaround Easement. The Company conveyed Lot 32 to a third party, subject to the Access Easement and the Turnaround Easement, on March 22, 1991.

Exhibit A

Map of Elliston Road

*(Attached)*



751

723

6

4

725

3

741

745

761

BOSTON POST RD 

BOSTON POST RD



BOSTON POST RD

SUTTON PL

ELLISTON RD

PAINE PL

FOX MEADOW LN

724

740

2

1  
3  
5  
7

6

8

730

3

1

Exhibit B  
Order of Taking  
*(Attached)*

TOWN OF WESTON  
ORDER OF TAKING  
ELLISTON ROAD

The Board of Selectmen of the Town of Weston, having complied with all the preliminary requirements prescribed by law, adopted an order on April 18, 1989 laying out as a public town way with the name Elliston Road as shown on a plan made by Kenneth B. Oates, Town Engineer, dated April 10, 1989, entitled "Layout Plan of Elliston Road" which plan was adopted as a part of such order and describing the boundaries of such way and including in it the land lying within its boundaries. Such order and plan were filed in the office of the Town Clerk on April 19, 1989. The layout was accepted by a vote adopted on May 10, 1989 at an adjourned session of the annual town meeting duly called for that purpose, which town meeting was dissolved on said date. It is necessary to acquire an interest in land for the purpose of Elliston Road as so laid out.

Wherefore, the Board of Selectmen, acting under the authority conferred by law, hereby adopts this Order of Taking by  eminent domain, whereby an easement for all the purposes of a public town way is  taken in the land lying within the boundaries of Elliston Road so laid out. Its boundaries are as follows, reference being made to the above mentioned plan, which is hereby adopted as a part of this Order also:

BEGINNING at a point on the Northerly side line of Boston Post Road which point is located on said side line of Boston Post Road, a distance of two hundred thirty-three and 15/100 (233.15) feet, from a Massachusetts Highway Bound;

THENCE by a curve having a radius of 35.00 feet, a distance of fifty-four 98/100 (54.98) feet;

THENCE N 7° 44' 00" E a distance of one hundred seventy-one and 10/100 (171.10) feet;

THENCE by a curve having a radius of 100.00 feet, a distance of eighty-two and 90/100 (82.90) feet;

THENCE N 39° 45' 54" W a distance of seventy-nine and 17/100 (79.17) feet;

THENCE N 45° 16' 57" E a distance of fifty and 19/100 (50.19) feet;

THENCE S 39° 45' 54" E a distance of eighty-three and 50/100 (83.50) feet;

THENCE by a curve having a radius of 150.00 feet, a distance of one hundred twenty-four and 35/100 (124.35) feet;

THENCE S 7° 44' 00" W a distance of one hundred seventy-one and 10/100 (171.10) feet;

THENCE by a curve having a radius of 35.00 feet, a distance of fifty-four and 98/100 (54.98) feet;

THENCE N 82° 16' 00" W a distance of one hundred twenty and 00/100 (120.00) feet to the point of BEGINNING.

It is believed that the owners of the lands lying within the above described boundaries of Elliston Road are as follows:

Richard M. and Peggy J. Medeiros	+Be Certificate of Title No. 180502 B11032 PG 152
Swiedler Building Company, Inc.	Certificate of Title No. 174050 B11000 PG 100

G.P.

Trees and stone walls and water pipes, mains, hydrants and other water facilities, drain pipes, manholes, and catch basins, and fire alarm conduit, cables and appurtenances not already the property of the Town, located within the above described boundaries of Elliston Road are also taken hereby. Other structures so located are not taken and shall be removed whenever their removal shall be required for the purposes of the way.

No betterments are to be assessed. No damages are awarded.

Adopted: May 30, 1989

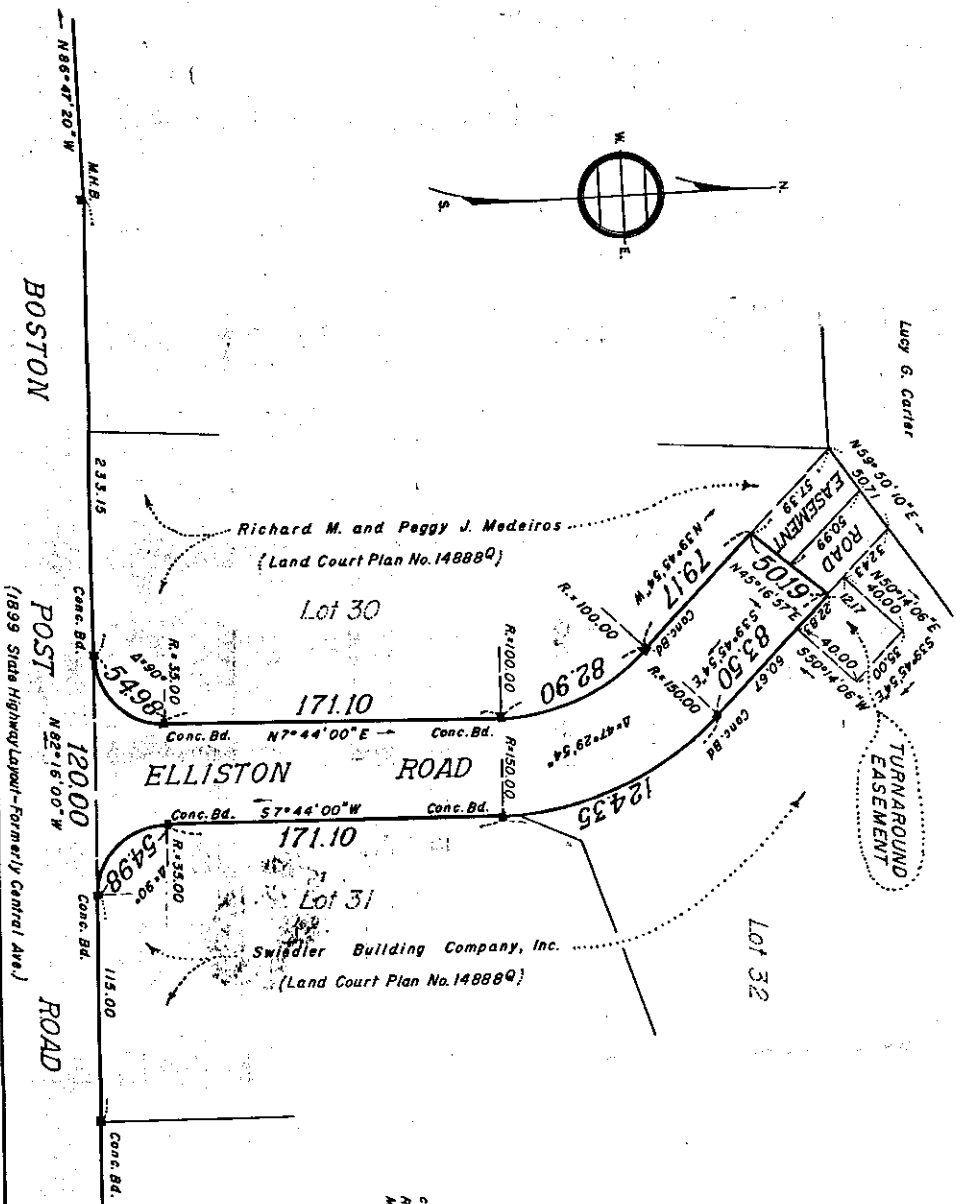
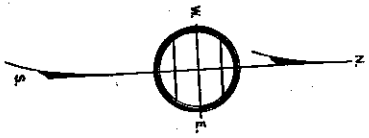
Harold B. Welch  
Richard A. Murray  
Joseph W. Williams

Filed in the office of the  
Town Clerk ~~May~~ JUNE 2, 1989.

Delen V. Zolla  
Town Clerk

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Lucy G. Carter

Richard M. and Peggy J. Medeiros  
(Land Court Plan No. 14888Q)

Swidler Building Company, Inc.  
(Land Court Plan No. 14888Q)

Adopted as part of an order  
laying out Elliston Road.  
April 18, 1989  
*[Signature]*  
Board of Selectmen

Filed in the office  
of the Town Clerk.  
April 19, 1989  
*[Signature]*  
Town Clerk

Approval under the Subdivision  
Control Law not required.  
April 24, 1989  
*[Signature]*  
Western Planning Board

I certify that this plan has been prepared in  
conformity with the rules and regulations of the  
Registry of Deeds of the Commonwealth of  
Massachusetts.  
April 10, 1989  
*[Signature]*



Town of Weston, Massachusetts

Layout Plan  
of

ELLISTON ROAD

Scale: 1 in. = 40 ft. April 10, 1989  
Kenneth B. Oates, Town Engineer



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55

0000

DOCUMENT 801169

Endorsed by **BLAISDELL**  
Checked by Devlin

SO. MIDDLESEX LAND COURT  
REGISTRY DISTRICT  
RECEIVED FOR REGISTRATION

ON 06/13/89 AT 01:27:03 42.00

NOTED ON:  
CERT 0180502 BK 1032 PG 152 ✓✓  
CERT 0174050 BK 1000 PG 100 ✓✓

CERTIFIED

CERTIFIED COPY WANTED

*FN HAND*  
*6-19-89*

*Chas A. Goddard JR. 235-4141*  
*Walden Office Park 40 Walling St.*  
*Walden ma, 02181*

Exhibit C

Plan 14888Q

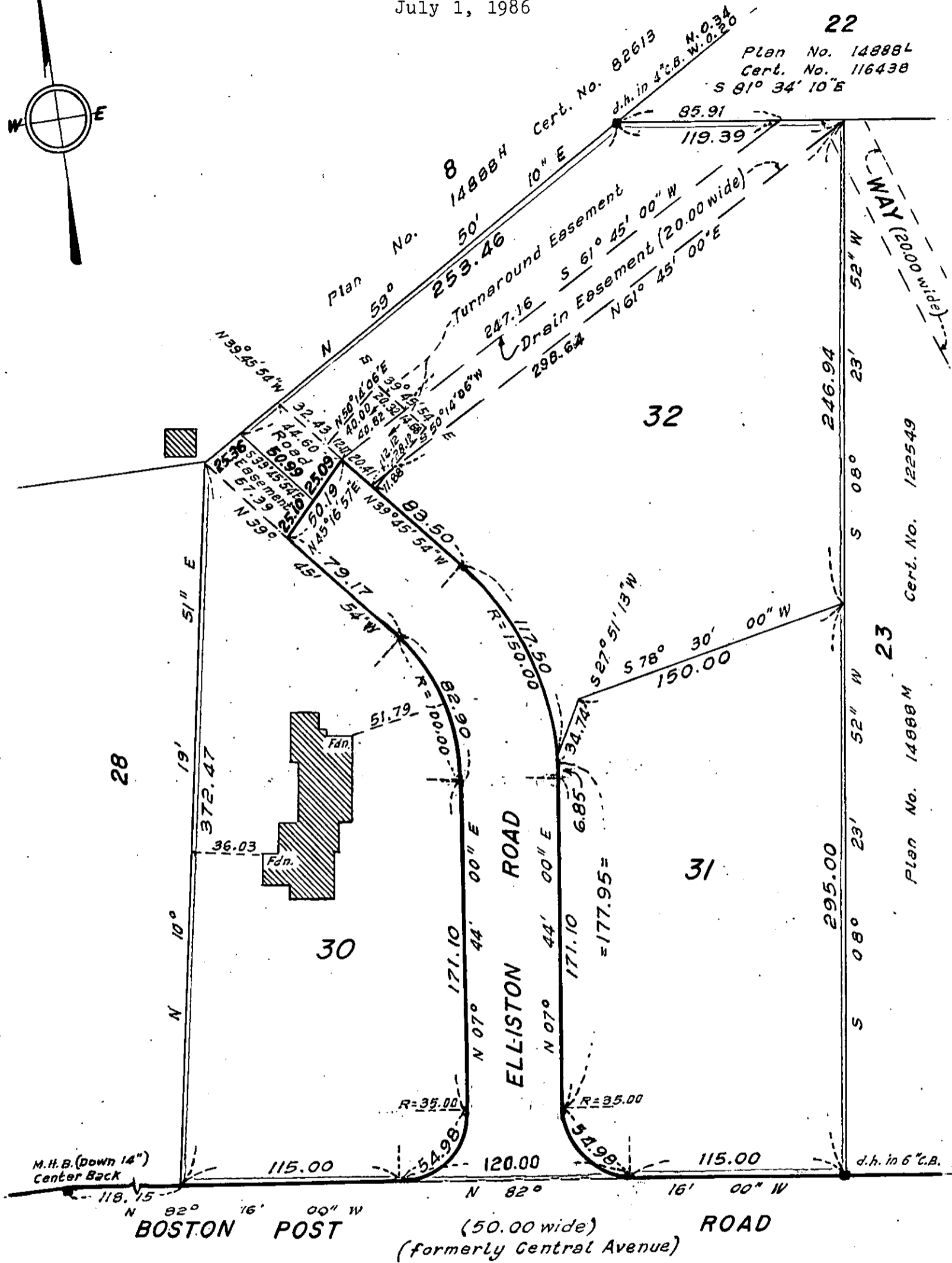
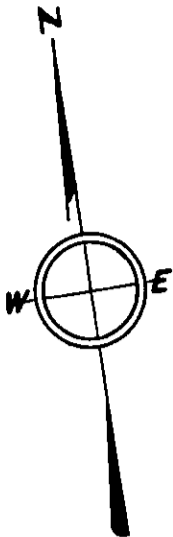
*(Attached)*

SUBDIVISION PLAN OF LAND IN WESTON

Everett M. Brooks Company, Surveyors

July 1, 1986

14888Q



Subdivision of Lot 29  
 Shown on Plan No. 14888P  
 Filed with Cert. of Title No. 174050  
 South Registry District of Middlesex County

Separate certificates of title may be issued for land shown hereon as Lots 30, 31 & 32 By the Court.

*Charles Crowley*  
 Recorder.

June 5, 1987  
 C.J.B.

Middlesex South Registry District

JAN 29 1990

RECEIVED FOR REGISTRATION

2 O'CLOCK 40 M P M

Copy of part of plan filed in

LAND REGISTRATION OFFICE

JUNE 5, 1987

Scale of this plan 60 feet to an inch  
 Louis A. Moore, Engineer for Court

Exhibit D

Town Vote and Acceptance of Easement

*(Attached)*

8 1 0 3 2 8

TOWN OF WESTON  
MASSACHUSETTS

I, Helen V. Zolla, Town Clerk of the Town of Weston, Massachusetts, certify that the following is a true and complete copy of a vote adopted under Article 6 of the warrant, on September 25, 1989 at a Special Town Meeting duly called:

Voted unanimously: that the Town accept an easement from Sweidler Building Company, Inc. with respect to a parcel of land situated in the Town shown and designated as "Elliston Road", "Turnaround Easement" and "Road Easement" on Land Court Plan No. 14888Q, to maintain, repair and use the same for all purposes for which streets and ways are now or may hereafter customarily be used in the Town, in common with and subject to the rights of others lawfully entitled thereto.

*Helen V. Zolla*  
Helen V. Zolla  
Town Clerk

October 11, 1989

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SWIEDLER BUILDING COMPANY, INC.  
a corporation duly established under the laws of Massachusetts  
and having its usual place of business at Weston

Middlesex County, Massachusetts

nominal, non-monetary  
for consideration paid, ~~and in full consideration of~~

grants to The TOWN OF WESTON, a Massachusetts municipal corporation situated in  
Middlesex County, having an address at Town House Road, Weston,  
~~of~~ Massachusetts ~~with quitclaim easements~~  
~~the land in~~

~~Description and circumstances, if any~~

All such rights and easements as the grantor may lawfully grant, in and with respect  
to the areas of land situated in said Weston shown and designated as "Elliston Road,"  
"Turnaround Easement" and "Road Easement" on Land Court Plan No. 14888Q, to maintain,  
repair and use the same for all purposes for which streets and ways are now or may  
hereafter customarily be used in said Weston, in common with and subject to the rights  
of others lawfully entitled thereto.

*Affecting Certificate of Title No. 174050;  
Lots 31, and 32 on L.C. Plan 14888Q*

*1032  
P152*

**In witness whereof,** the said Swiedler Building Company

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and  
delivered in its name and behalf by J. Russell Poirier,  
its President and <sup>Treasurer</sup> hereto duly authorized, this *sixth*  
day of ~~March~~ *April* in the year one thousand nine hundred and eighty-nine.

~~Signed and sealed in presence of~~

*Kenneth B. Date*  
SWIEDLER BUILDING COMPANY, INC.  
by *J. Russell Poirier*, President and Treasurer

The Commonwealth of Massachusetts

Middlesex, ss. *April* ~~March~~ *6* 1989

Then personally appeared the above named J. Russell Poirier  
and acknowledged the foregoing instrument to be the free act and deed of the Swiedler Building  
Company, Inc. before me,

*Kenneth B. Date*  
Notary Public - Justice of the Peace  
My commission expires *July 15* 19*94*

CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee  
and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for  
a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or en-  
cumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed.  
Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless  
it is in compliance with the requirements of this section.

*2-3*

(THE FOLLOWING IS NOT A PART OF THE DEED, AND IS NOT TO BE RECORDED.)

CHAPTER 183, SECTION 11, GENERAL LAWS

A deed in substance following the form entitled "Quitclaim Deed" shall when duly executed have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor, for himself, his heirs, executors, administrators and successors, with the grantee, his heirs, successors and assigns, that at the time of the delivery of such deed the premises were free from all encumbrances made by him, and that he will, and his heirs, executors and administrators shall, warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other.

*Quitclaim Deed  
68573  
Pl 10/10/89*

DOCUMENT 810328

SO. MIDDLESEX LAND COURT  
REGISTRY DISTRICT  
RECEIVED FOR REGISTRATION  
ON 11/26/89 AT 12:26:54 40.00  
NOTED ON:  
CERT 0174050 BK 1000 PG 100

MASSACHUSETTS

Statute Form of

**Quitclaim Deed**

[BY CORPORATION]

Swiedler Building Company, Inc.

TO

Town of Weston

at ..... o'clock and ..... minutes ..... 19

Received and entered with..... Deeds

Book..... Page.....

Attest:

Register

FROM THE OFFICE OF

**NUTTER, McLENNEN & FISH**  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2699

RETURN TO →

HOBBS & WARREN, INC.  
PUBLISHERS STANDARD LEGAL FORMS  
BOSTON - MASS.  
Form 884

REVISED CHAPTER 487 - 1989

(Please print or type)

**NUTTER, McLENNEN & FISH**  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2699

719

ECM

3-3



Exhibit E

Map of Turnaround Easement, Access Easement and Town's Fee Interest in Elliston Road

*(Attached)*

