

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949



Fax: (508) 520-4903

355 East Central Street  
Franklin, Massachusetts 02038-1352

**Date:** December 12, 2018

**To:** Town Council

**From:** Jamie Hellen

A handwritten signature in blue ink, appearing to be "J. Hellen", is written over the name "Jamie Hellen" in the "From:" field.

**Re:** Acceptance of Private Road Covenant on Homes Ave

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This resolution is proposing the Town accepts a Private Road Covenant on Homes Ave with the Owner-Developer of O'Brien Estates, which is a two-lot, two-house subdivision plan that was approved and filed with the Town Clerk in 2002. Acceptance of this covenant will allow the Planning Board to proceed with its permitting process.

Please feel free to call with any questions.



**TOWN OF FRANKLIN**

**RESOLUTION 18-75**

**ACCEPTANCE OF PRIVATE ROAD COVENANT WITH OWNER-DEVELOPER OF O'BRIEN ESTATES, A TWO-LOT SUBDIVISION**

**WHEREAS**, the Franklin Planning Board on August 19, 2002 voted to approve with conditions a definite subdivision plan for a two-lot subdivision know as O'Brien Estates, which vote was filed with the Town Clerk on August 20,2002; and

**WHEREAS**, said vote included conditions that Homes Ave, the access roadway shown on the above described subdivision plan, together with related drainage and utilities, be and remain private and that the private property owner(s) have the exclusive obligation to maintain and repair the same, as well as to remove snow therefrom; and

**WHEREAS**, James M. O'Brien is the owner of the subject property and has executed a covenant incorporating the foregoing conditions, a true copy of which is attached as "Exhibit 1",

**NOW, THEREFOR, BE IT ORDERED** that the Town of Franklin, acting by and through its Town Council, hereby authorizes the Town Administrator to execute the covenant, a copy of which is attached hereto as Exhibit 1, on behalf of the Town of Franklin

This resolution shall become effective according to provisions of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_ , 2018

**VOTED:** \_\_\_\_\_

**UNANIMOUS:** \_\_\_\_\_

**A TRUE RECORD ATTEST:**

**YES:** \_\_\_\_ **NO:** \_\_\_\_

**ABSTAIN:** \_\_\_\_ **ABSENT:** \_\_\_\_

**Teresa M. Burr**  
Town Clerk

\_\_\_\_\_  
**Glenn Jones, Clerk**  
Franklin Town Council

# Exhibit 1

## COVENANT WITH THE TOWN OF FRANKLIN (O'Brien Estates, A PRIVATE WAY)

I, James M. O'Brien, of 31 Daniels St. Franklin, Norfolk County, Massachusetts 02038, am the owner of land shown as Lots 2 and 3 situated on Homes Ave in said Franklin, Norfolk County and Commonwealth, shown on plan entitled, "O'Brien Estates, A Private Definitive Subdivision, Franklin, Massachusetts", herein the "Plan" dated December 24, 2015, revised through April 22, 2016, prepared by GLM Engineering, 19 Exchange St., Holliston, Massachusetts recorded at the Norfolk County Registry of Deeds in Plan Book 511, Page 451.

Lots 2 and 3 are shown on said plan as O'Brien Estates and contain a private way named Homes Ave. The plan was approved with conditions by the Planning Board of the Town of Franklin by Certificate of Vote dated March 21, 2016, filed with the Town Clerk of the Town of Franklin on March 23, 2016, a certified copy of which having been recorded at Norfolk County Registry of Deeds Book 34001, Page 271.

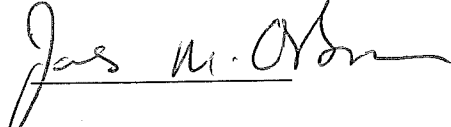
In accordance with said Plan and Certificate of Vote, I, for valuable consideration paid, the receipt of which is hereby acknowledged, for myself and my heirs, successors, transferees and assigns, covenant and agree with the Town of Franklin, by and through its Town Administrator, whose signature is affixed hereto, together with a resolution of the Town Council of said Town of Franklin, as follows:

- 1.) Homes Ave shall be constructed as a private road in accordance with the above-described Plan and any and all waivers granted by the Franklin Planning Board.
- 2.) The property owner served by said Homes Ave shall have the exclusive and continuing obligation for maintenance, repair and snow removal of said way and the maintenance and repair of the drainage structure, if any.
- 3.) Homes Ave shall remain a private road and is not intended to be now or at any time in the future a public way and the drainage structures, if any, shall remain private structures for the benefit of the property owner.
- 4.) No petition shall ever be made to the Town of Franklin seeking to change the status of Homes Ave and or the drainage structures, if any, from that of private way/private drainage structures or to transfer the obligation for maintenance, repair and/or snow removal from the private property owners to the Town of Franklin.
- 5.) Homes Ave and drainage structure, if any, shall be constructed in accordance with the standard set forth in Section 300, Subdivision of Land Rules and Regulations of the Town of Franklin, except those waived by the Planning Board. Maintenance and repair of the private way, water supply systems, sewer pipes, electric distribution system and storm water system shall be the responsibility of the owners and shall never be the responsibility of the Town of Franklin and the Town of Franklin shall never be required to perform any service, repair or maintenance with respect to said way, areas or any of the aforementioned systems within the subject property. The Town of Franklin will never be required to provide snow plowing with respect to the subject property;
- 6.) The Town of Franklin, its agents and servants shall have the right but not the obligation at all times to enter Homes Ave and the drainage structures, if any, for the purpose of inspecting, maintaining and/or making emergency repairs including, but not limited to, drainage. In such event, the private property owners shall be liable, jointly and severally, for the payment of all

expenses incurred by the Town of Franklin in connection therewith, and unpaid expenses shall constitute a lien on their property.

This Covenant shall be binding upon the record owner of Lot 2 and 3 and his heirs, successors, transferees and assigns and shall run with the land.


Executed as sealed instrument this 10th day of December, 2018.

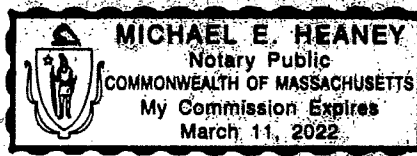
  
James M. O'Brien

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On this 10<sup>th</sup> day of December 2018, before me, the undersigned notary public, personally appeared James M. O'Brien, proved to me through satisfactory evidence of identification, which were a Massachusetts Driver's License, to be the person whose name are signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public  
My Commission Expires



Town of Franklin

By: \_\_\_\_\_  
Jeffrey D. Nutting, Town Administrator  
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this \_\_\_ day of December 2018, before me, the undersigned notary public, personally appeared Jeffrey D. Nutting, Town Administrator, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name are signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: