



Planning Department

TOWN OF ACTON
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INTERDEPARTMENTAL COMMUNICATION

To: Planning Board

Date: September 9, 2005

From: Kim DeNigro, Secretary for Planning & Engineering Depts.

Subject: Brabrook Road Extension

Attached is the Tri-Party Agreement and Ellsworth Village Road Bond Calculation - Brabrook Road Extension.

FYI

Mr. Bartl has signed the Ellsworth Village Plan and construction has begun.

For Brabrook
Ribe
Pope

TRI-PARTY AGREEMENT
SECURED WITH LENDING INSTITUTION
TOWN OF ACTON

Agreement made this 8th day of September, 2005, by and between Ellsworth Village, LLC, a Massachusetts Limited Liability Company with a principal place of business at 25 Westford Land, Acton, Middlesex County, Massachusetts (hereinafter referred to as the "Applicant"); Middlesex Savings Bank (hereinafter referred to as the "Lender"); and the Town of Acton, acting through its Planning Board (hereinafter referred to as the "Board").

WHEREAS, pursuant to the provisions of the Massachusetts Subdivision Control Law and the Board's Rules and Regulations adopted thereunder, the Board has approved the "Ellsworth Village Senior Residence Special Permit" by Decision 05-01 dated April 26, 2005, and recorded with the Middlesex South Districted Registry of Deeds in Book 45933, Page 22; and has further approved a definitive plan entitled, "Ellsworth Village; Brabrook Road; Acton, Massachusetts" dated: November 19, 2004; rev.: March 1, 2005, ~~and~~ August 1, 2005, prepared by: Stamski and McNary, Inc." which plan was recorded with the Registry as Plan No. _____ of _____.

R.B.
MS
JGH

WHEREAS, the Applicant and the Board have executed an instrument entitled, "Restrictive Covenant" (the "Covenant") dated August 25, 2005 and recorded with said Deeds in Book _____, Page _____; which said documents provide for the Applicant to complete certain amenities and improvements as a condition of the Decision;

WHEREAS, the Applicant has granted to the Lender two mortgages dated August 22, 2005, recorded with said Deeds on August 22, 2005, one in the amount of \$1,000,000.00 recorded in Book 45933, Page 96 for acquisition; and one in the amount of \$2,000,000.00, recorded in Book 45933, Page 57, for construction and improvements, covering the site as security (the former being referred to herein as the "Mortgage").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. The Lender shall retain Two Hundred Fifty Eight Thousand Two Hundred and no/100 (\$258,200.00) Dollars, as the Bond Amount calculated pursuant to the Subdivision Road Bond Calculation annexed hereto and marked "Exhibit A", such sum to be held from the principal of the mortgage which shall be disbursed in two or more releases, but not to exceed three (3) partial releases and one (1) final release, to the Applicant as and when the Board has determined that the Applicant has completed the *work itemized in Exhibit A* ~~construction of the Private Way, the installation of municipal services, and the construction of certain other improvements for Lots 1-33 as shown on the Subdivision Plan and approved by the Planning Board of the Town of Acton,~~ hereinafter the "Improvements".

*R.B.
RMS
DGH*

Applicant can obtain a reduction in the amount retained by Lender upon application to the Board and receipt of a certificate of completion of a portion of the "Improvements". Lender shall not release the amount retained without the receipt of authorization for such reduction by the Board, as evidenced by a written notification of the Town Planner.

1. The above described work shall be completed no later than September 10, 2007 unless such date is extended by written agreement of each of the parties hereto.

2. This Agreement shall not expire until the Board, upon request, certifies that all “Improvements” have been completed according to the approved plan, and that the performance guarantee is released, or, until 45 days have elapsed, without a Board response, from the date the Board receives, by Certified Mail, a request for such certification and release; whichever comes first.

3. The full amount of the guarantee or the amount remaining following releases of portions of the amount by the Board shall be due immediately to the Town of Acton in case of the default of the developer or its successors in constructing the “Improvements” Default shall be defined as follows:

a) Failure to complete all “Improvements” as shown on the approved subdivision plan by the aforesaid completion date, or

b) Bankruptcy of the developer or the foreclosure of any mortgage on all or part of the Applicant’s land, shown on the Subdivision Plan before the scheduled completion date, or

c) Notice to the Board of the withdrawal or termination of any performance guarantee given hereunder, or of a request to substitute performance guarantee hereunder, prior to the scheduled completion date of the work, unless it is given forty-five (45) days prior to the anticipated date of such withdrawal, termination or substitution.

d) Any other condition or circumstance that constitutes default, in the opinion of the Board.

In the event the balance of the Bond is released to the Town of Acton it will be used and applied by the Town in completion of the improvements.

4. In consideration of the foregoing, the Board hereby acknowledges that the Applicant has complied with the requirements of the Decision that the applicant post a performance guarantee with the Board .

5. This Agreement sets forth the entire agreement between the parties regarding the matters set forth herein, is binding upon the parties and their respective successors, assigns and legal representatives, and may be modified only by a written instrument executed by all parties.

6. The obligations of the parties hereunder are to be construed consistent with the Subdivision Control Law and said rules and regulations, including but not limited to Section 6.2, and no rights granted thereunder are waived.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Executed as a sealed instrument this 8th day of September, 2005.

TOWN OF ACTON PLANNING
BOARD

By: Roland Bartl
Roland Bartl, AICP
Town Planner

MIDDLESEX SAVINGS BANK

By: David G. Huntley
David G. Huntley
Vice-President

ELLSWORTH VILLAGE, LLC

BY: James D. Fenton
James D. Fenton, Member

BY: Michael J. Jeanson
Michael J. Jeanson, Member

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 8, 2005

Then personally appeared before me, the undersigned notary public, Roland Bartl, proved to me through satisfactory evidence of identification, which was MA DRIVER'S LICENSE, 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 Town Planner of the Town of Acton, as aforesaid.

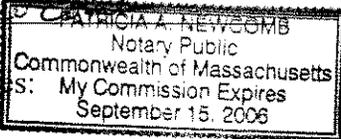
Maura Ann Haberman
Notary Public
My Commission Expires:  MAURA ANN HABERMAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 12, 2012

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

SEPT 7, 2005

Then personally appeared before me, the undersigned notary public, David G. Huntley, proved to me through satisfactory evidence of identification, which was MA DRIVER'S LICENSE, 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 Vice-President of Middlesex Savings Bank, as aforesaid.

Patricia A. Newsomb
Notary Public
My Commission Expires:  PATRICIA A. NEWSOMB
Notary Public
Commonwealth of Massachusetts
My Commission Expires
September 15, 2006

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 8, 2005

Then personally appeared before me, the undersigned notary public, James D. Fenton, proved to me through satisfactory evidence of identification, which was MA DRIVERS 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 Member of Ellsworth Village, LLC, as aforesaid.

Maura Ann Haberman
Notary Public
My Commission Expires:  MAURA ANN HABERMAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 12, 2012

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September 8, 2005

Then personally appeared before me, the undersigned notary public, Michael J. Jeanson, proved to me through satisfactory evidence of identification, which was MA DRIVERS 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 Member of Ellsworth Village, LLC, as aforesaid.



Carole Anne Paro

Notary Public

My Commission Expires:

TOWN OF ACTON ENGINEERING DEPARTMENT
 Street Name: Brabrook Road
 Subdivision Road Bond Calculation

Date: 9/30/2005
 Length: 1070

DESCRIPTION	QTY	UNIT	COST/UNIT	TOTAL COST
ITEM 1 - CLEARING				
A. CLEARING & EXCAVATING	1	L.S.	\$ 2,000.00	\$ 2,000.00
B. HAULED FILL	500	C.Y.	\$ 16.00	\$ 8,000.00
C. EXCAVATION BELOW 26"		C.Y.		\$ -
D. STUMP DISPOSAL		L.S.		\$ -
SUBTOTAL CLEARING (ITEM 1)				\$ 10,000.00
ITEM 2 - WATER				
A. F & I - 6" WATER MAIN		L.F.		\$ -
B. F & I - 8" WATER MAIN		L.F.		\$ -
C. F & I - 12" WATER MAIN		L.F.		\$ -
D. VALVES at INTERSECTIONS		EACH		\$ -
E. TAPPING, SLEAVE & GATE VALVE		EACH		\$ -
F. HOUSE SERVICE CONNECTIONS		EACH		\$ -
G. HYDRANTS, INCL. VALVES & FITTINGS		EACH		\$ -
H. "AS-BUILT" PLAN AND TIES TO GATES & SHUT-OFFS		L.S.		\$ -
I. ESTIMATE (to complete)	1070	L.F.	\$ 65.00	\$ 69,550.00
SUBTOTAL WATER (ITEM 2)				\$ 69,550.00
ITEM 3 - DRAINAGE				
A. F&I - C.B. W/ SINGLE FRAME & GRATE	3	EACH	\$ 2,400.00	\$ 7,200.00
B. F&I - Raise & Mortar - C.B. FRAME & GRATE		EACH		\$ -
C. F&I - D.M.H. W/ FRAME & COVER	2	EACH	\$ 2,400.00	\$ 4,800.00
D. F&I - Raise & Mortar - D.M.H. FRAME & COVER		EACH		\$ -
E. F & I - GAS/OIL HOOD	3	EACH	\$ 400.00	\$ 1,200.00
F. F & I - ADS 12" FLARED END		EACH		\$ -
G. F & I - ADS 18" FLARED END		EACH		\$ -
H. F & I - DROP INLET		L.F.		\$ -
I. F & I - 12" R.C.P.		L.F.		\$ -
J. F & I - 12" C.P.P. (corrugated polyethylene pipe)		L.F.		\$ -
K. F & I - 12" ADS PIPE	26	L.F.	\$ 11.00	\$ 286.00
L. F & I - 15" ADS PIPE	136	L.F.	\$ 17.00	\$ 2,312.00
M. F & I - MINI CB W/ FRAME & COVER (SUBDRAIN)		EACH		\$ -
N. SUBDRAIN & STONE SWALE		L.F.		\$ -
O. DRAINAGE SWALE		L.F.		\$ -
P. STONE SWALES		L.F.		\$ -
Q. SUBDRAIN W/PIPE		L.F.		\$ -
R. F & I - LEACH PITS & STONE		EACH		\$ -
S. RIP-RAP at OUTFALLS	3	L.S.	\$ 500.00	\$ 1,500.00
T. F&I - BOX CULVERT	38	L.F.	\$ 425.00	\$ 16,150.00
T. F&I - Detention Basin		EACH		\$ -
U. F&I - STORMCEPTOR 450i	2	EACH	\$ 7,000.00	\$ 14,000.00
V. RETAINING WALL BETWEEN BASINS		C.Y.		\$ -
SUBTOTAL DRAINAGE (ITEM 3)				\$ 47,448.00

Brabrook Road Extension

ITEM 4 - SURFACE

A. F & I - 12" GRAVEL SUB-BASE	135 C.Y.	\$ 25.00	\$ 3,375.00
B. F & I - 6" PROCESSED GRAVEL	70 C.Y.	\$ 35.00	\$ 2,450.00
C. FINE GRADE for PAVING	400 S.Y.	\$ 1.50	\$ 600.00
D. 2" TYPE I BITUMINOUS CONC. - Binder	400 S.Y.	\$ 5.00	\$ 2,000.00
E. 1.5" TYPE I BITUMINOUS CONC. - Top	400 S.Y.	\$ 4.00	\$ 1,600.00
F. BITUMINOUS CONCRETE BERM	800 L.F.	\$ 3.00	\$ 2,400.00
G. SIDEWALK (Gravel, Grading, & Paving)	L.F.		\$ -
H. VERTICAL GRANITE EDGING	80 L.F.	\$ 16.50	\$ 1,320.00
I. SLOPED GRANITE EDGING	400 L.F.	\$ 18.00	\$ 7,200.00

SUBTOTAL SURFACE (ITEM 4) \$ 20,945.00

ITEM 5 - SHOULDERS

A. SHAPE SHOULDER & SUBGRADE	360 L.F.	\$ 2.00	\$ 720.00
B. F & I - 6" LOAM for SHOULDERS	360 L.F.	\$ 3.00	\$ 1,080.00
C. FINE GRADE, FERTILIZE & SEED SHOULDERS	360 L.F.	\$ 3.00	\$ 1,080.00
D. SHAPE, LOAM, & SEED SLOPES	S.Y.		\$ -
E. F & I - TREES (Est. by Tree Warden)	EACH		\$ -
F. EROSION CONTROL	L.S.		\$ -
G. STONE CONSTRUCTION ENTRANCE	L.S.		\$ -
H. CONTINGENCY TREE PLANTING	L.S.		\$ -

SUBTOTAL SHOULDERS (ITEM 5) \$ 2,880.00

ITEM 6 - ENGINEERING

A. F & I - ROAD BOUNDS, incl. LAYOUT & CERTIFICATION	EACH		\$ -
B. F & I - MAG NAILS, INCL. LAYOUT & CERTIFICATION	EACH		\$ -
C. PREPARE "AS-BUILT" PLAN & LETTER CERTIFYING WORK	1 L.S.	\$ 3,000.00	\$ 3,000.00
E. ROAD LAYOUT with GRADES	4 EACH	\$ 1,000.00	\$ 4,000.00
F. LEGAL DESCRIPTION, WARRANT ARTICLE & PROPOSED DEED	L.S.		\$ -

SUBTOTAL ENGINEERING (ITEM 6) \$ 7,000.00

ITEM 7 - MISCELLANEOUS

A. FIRE ALARM SYSTEM	L.S.		\$ -
B. F & I - ROAD SIGN, incl. POLE & PRIV WY PLATE	EACH		\$ -
C. F & I - SHEA RECON RETAINING WALL	300 L.F.	\$ 115.00	\$ 34,500.00
D. PAVEMENT MARKINGS - Thermal plastic	L.S.		\$ -
E. F & I - CROSSWALK, PED SIGNS, STOP SIGN	1 L.S.	\$ 1,000.00	\$ 1,000.00
F. F&I - GUARD RAIL	330 L.S.	\$ 30.00	\$ 9,900.00
G. EMER. ACCESS RD. (Gravel, Grass Pavers, etc.)	L.F.		\$ -
H. F&I - EMERGENCY ACCESS GATE	L.S.		\$ -
I. RETAINING WALLS	L.S.		\$ -
J. SIDEWALK: Brabrook Road	1050 L.S.	\$ 30.00	\$ 31,500.00
K. SIDEWALK ON:	L.F.		\$ -
L. LEDGE BLASTING	L.S.		\$ -

SUBTOTAL MISC. (ITEM 7) \$ 76,900.00

SUBTOTAL	\$ 234,723.00
PLUS 10% CONTINGENCY	\$ 23,472.30
GRAND TOTAL	\$ 258,195.30
PRICE PER FOOT	\$ 241.30
FINAL BOND AMOUNT SAY....	\$ 258,200.00