96

EVA K. BOWEN
TOWN CLERK

TOWN OF ACTON
472 MAIN STREET
ACTON, MASSACHUSETTS, 01720
TELEPHONE (978) 264-9615
FAX (978) 264-9630
clerk@acton-ma.gov

2006 00040498
Bk: 47074 Pg: 265 Doc: DECIS
Page: 1 of 98 03/07/2006 02:10 PM

March 1, 2006

TO WHOM IT MAY CONCERN:

This is to certify that the attached Board of Appeals Decision (#04-13) on a petition by Woodlands at Laurel Hill, LLC for a comprehensive permit, was filed with the Town Clerk's Office on January 31, 2006.

This is to certify that the 20 day appeal period on this decision has passed and there have been no appeals made to this office.

Eva K. Bowen
Town Clerk

Nagog Park Road, Acton, Massachusetts

OWNER Recreational Realty Trust LLC
44723-420
46778-156
46844-535

Please return to: D'Agostine, Levine, Parra & Netburn, P.C., P. O. Box 2223
Acton, MA 01720

RECEIVED & FILED
JAN 31 2006
TOWN CLERK
ACTON

Zoning Board of Appeals
Woodland's at Laurel Hill
Comprehensive Permit
Minutes
Hearing #04-13

A public meeting of the Acton Board of Appeals was opened in the Town Hall on January 30, 2006 at 7:30 PM.

Present at the hearing was Jonathan Wagner, Chairperson; Kenneth Kozik, Member; David Black, Member;; Garry Rhodes, Building Commissioner; Steve Graham, and Mark Brooks

Chairman Wagner opened the meeting and explained the purpose of the meeting was to determine if a request dated January 17, 2006 by Louis Levine attorney for Woodlands at Laurel Hill LLC was substantial or insubstantial in accordance with 760 CMR 31.03(3).

A motion was made by David Black the request was insubstantial. The motion was seconded by Kenneth Kozik. The motion was approved by a vote of 2-1 with Jonathan Wagner voting to deny.

The meeting was closed.

Respectfully submitted,

Garry Rhodes for the Board of Appeals.

A True Copy. Attest:
TOWN CLERK, ACTON, MASS.

D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.
Attorneys at Law

Louis N. Levine
F. Alex Parra
Cathy S. Netburn
Lisa Bergemann
Maryann Cash Cassidy

268 Main Street | P.O. Box 2223 | Acton, MA 01720
tel 978.263.7777
fax 978.264.4868

Of Counsel
Julian J. D'Agostine

RECEIVED
JAN 17
ACTON BOARD OF APPEALS

January 17, 2006

BY HAND DELIVERY
Board of Appeals
Town Hall
Acton, MA 01720

Re: Decision Upon Application of Woodlands at Laurel Hill, LLC for a Comprehensive Permit; Filed with the Acton Town Clerk December 20, 2005

Dear Board Members:

On behalf of the Applicant in the above entitled matter, it is respectfully requested that, pursuant to 760 CMR 21.03(3) the following insubstantial change be made to the above Decision:

At the request of the Applicant, to clarify certain matters in the record of its proceedings on this matter, the Acton Zoning Board of Appeals (the "ZBA") makes the following supplemental findings of fact in Section IX, paragraph 50(b) of the above-captioned Decision:

> Without limitation, the Site is situated in a neighborhood containing a substantial pre-existing office park (Nagog Park), other pre-existing business in Acton (on the Fenton Realty property) and in Westford (a commercial horse ranch), a pre-existing multi-family condominium development in Acton (Nagog Woods), other pre-existing commercial establishments at the entrance to Nagog Park, and a pre-existing private sewage treatment facility serving certain of these uses. The Revised Project can and should co-exist with these abutting and nearby uses without causing an undue burden on the occupants of the Revised Project, on the surrounding neighborhood, or the Town

This Addendum clarifies the Board's Decision as to matters contained in the record of the public hearing and does not incorporate new evidence or change the result of or conditions imposed by the Decision.

Very truly yours,

Woodlands at Laurel Hill, LLC, Applicant
By its attorney
D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.

By: _____
Louis N. Levine

LNL/rah
Cc: Steve Anderson, Esquire
Steven R. Graham, Esquire
Client

RECEIVED & FILED
JAN 23 2006
TOWN CLERK
ACTON

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

To: **Eva K. Bowen, Town Clerk** ***Date:*** January 23, 2006

From: Garry A. Rhodes, Building Commissioner

Subject: Zoning Board of Appeals Comprehensive Permit #04-13
Woodland's at Laurel Hill,

The Board of Appeals will be holding a meeting on January 30 at 7:30 PM in the Town Hall located at 472 Main Street to determine if a requested amendment is "substantial" or "insubstantial" in accordance with 760 CMR 31.03(3).

04-13

RECEIVED & FILED
DEC 20 2005
TOWN CLERK
ACTON

DECISION

TOWN OF ACTON, MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION UPON APPLICATION OF
WOODLANDS AT LAUREL HILL, LLC
FOR A COMPREHENSIVE PERMIT

I. APPLICANT AND PUBLIC HEARING

1. Pursuant to notice duly mailed, published and posted, a public hearing was held by the Acton Zoning Board of Appeals (the "ZBA") at the Acton Town Hall, 472 Main Street, Acton, Massachusetts, on November 4, 2004, commencing at 7:30 p.m., upon the application of Woodlands at Laurel Hill, LLC, a Massachusetts limited liability company ("Woodlands" or the "Applicant") for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 ("the Act") and under Town of Acton Zoning By-Laws, to build low or moderate income housing in a development of 296-unit multi-family rental housing development all as more particularly described on the Plans referenced in this Decision below (the "Project") on approximately 35 acres of land located off Nagog Park Road and Westford Lane in Acton and identified as Parcels 2, 6, 7, 9, 11, 18 and 42 on Acton Assessor's Map B-5, and Highridge Way so-called on Assessor's Map B-5 (the "Site"), with off-site improvements proposed as affecting Parcels 1, 2, 2-1, 2-1, 2-3, 2-3, and 6-1 on Acton Assessor's Map B-4.[1] The ZBA conducted a view of the premises on December 4, 2004, and held continued public hearings on the original application on December 2, 2004, and February 9, 2005,

2. On February 9, 2005, the Applicant requested permission to amend the Project in Acton to consist of the original 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units on the balance of Parcel 7 on Acton Assessor's Map B-5 (designated as "Lot 4" on the Revised Plans referenced in this Decision below), all as more particularly described, amended and updated on the Plans, the Revised Plans, the Engineering Drawings, and the Architectural Plans referenced in this Decision below (collectively the "Revised Project").[2]

3. On or about March 8, 2005, the Applicant submitted its formal amended application for the Revised Project. The ZBA published and posted appropriate public notice of the amended application, and the Applicant sent certified mail notices to interested parties.

---

[1] The Project also included 84 proposed residential rental units in Westford pursuant to a proposed comprehensive permit from the Westford Board of Appeals.

[2] The Revised Project also includes 84 proposed residential rental units in Westford and 2 new single family homes in Westford pursuant to an amended application for a proposed comprehensive permit from the Westford Board of Appeals.

4. The ZBA considered the amended application during public hearings on March 30, 2005, April 27, 2005, May 11, 2005, and June 1, 2005.

5. At the public hearings on June 29, 2005, and in more detail on July 21, 2005, the Applicant introduced the following two alternative site plans for the Revised Project, for consideration by the ZBA:

(a) A plan dated 7-11-05, labeled "revised/updated" intended to incorporate (i) responses to comments from Town boards and Town agents and (ii) adjustments by the applicant ("Option 1"); and

(b) A plan labeled "Proponent's Preferred Plan" dated 7-11-05, which incorporated all of the changes outlined in Option 1 above but which also consolidated the 4 apartment buildings, club house and amenities at the entrance of the project into one proposed building of 86 units served by 2 elevators to be 100% ADA accessible ("Option 2").

6. On or about July 29, 2005, the Applicant submitted its formal amended and updated application for the Revised Project, depicting Option 1 and Option 2, above.

7. After receiving comments from various Town boards and officials at the continued public hearing on September 20, 2005, the ZBA assented to the Applicant proceeding to detailed final engineering drawings for Option 2, to be submitted to the Board on October 19, 2005.

8. The Applicant submitted detailed engineering drawings for the Option 2 Revised Project on October 19, 2005, as more particularly referenced in this Decision below (the "Engineering Drawings").

9. The Board held further public hearings on October 20, 2005, and November 21, 2005, to receive input on proposed waivers and proposed conditions that may be imposed on a decision of approval, in the event the Board was to issue such a decision.

10. After receiving comments from various Town boards and officials, the ZBA considered the Engineering Drawings and related comments during a public hearing on November 30, 2005.

11. The ZBA closed the public hearing on December 19, 2005, and began its deliberations.

12. The ZBA has issued this Decision within the time frame specified in Massachusetts General Laws, Chapter 40B, §§ 20-23.

13. All sessions of the public hearing were transcribed by a court reporter, or detailed minutes were taken, and the transcripts, minutes and exhibits are available for public inspection in the ZBA's offices. A list of the Transcripts and Hearing Exhibits is contained in the record.

14. Throughout the public hearing the Applicant was represented by Attorney Louis Levine of Acton.

15. Sitting for the ZBA and present throughout the public hearings were Chairman Jonathan Wagner, Members Kenneth Kozik and David Black, and associate member Cara Voutselas.

16. Voting on this Decision were the three signatories to this Decision, below.

II. NATURE OF THIS PROCEEDING

17. In conducting its hearings in this matter, the ZBA is guided by the decision of the Supreme Judicial Court in Dennis Housing Corp. v. Board of Appeals of Dennis, 439 Mass. 71, 76-77 (2003) (citations omitted), that a qualified developer proposing to build low or moderate income housing:

> may submit to the zoning board of appeals "a single application to build such housing in lieu of separate applications to the applicable local boards." The zoning board is then to notify those "local boards" for their "recommendations" on the proposal; the zoning board may "request the appearance" of representatives of those "local boards" at the public hearing as may be "necessary or helpful" to the decision on the proposal; and the zoning board may "take into consideration the recommendations of the local boards" when making its decision. .... The zoning board then has "the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application," ... and, in some circumstances, has the power to override requirements or restrictions that would normally be imposed by those local boards. .... If the zoning board denies the application for comprehensive permit, or approves it only on conditions that make the project "uneconomic," the applicant may appeal to the housing appeals committee ... which also has the power to override local regulations and direct the issuance of a comprehensive permit."[2]

[2] The Housing Appeals Committee's decision itself is further reviewable by the Superior Court in accordance with the State Administrative Procedure Act, G.L. c. 30A.

18. Any person aggrieved by the issuance of a comprehensive permit has a right of appeal to the Superior Court under Section 17 of the Zoning Act (Chapter 40A).

III. GOVERNING LAW

19. The law governing this case is The Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD") Housing Appeals Committee, 760 CMR 30.00ff and 31.00ff (the "Regulations").

20. The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass. 339 (1973). The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total land area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. See, e.g., Arbor Hill Holdings Limited Partnership v Weymouth Board of Appeals, Housing Appeals Committee No. 02-09 (9/24/03).

21. Acton does not presently meet any of these criteria. That being the case, Acton's Zoning Bylaw and its other local bylaws and regulations which ordinarily govern development in the Town may be overridden by a comprehensive permit issued by this Board upon a proper showing by the Applicant. Hanover v. Housing Appeals Committee, supra.

IV. GOVERNING PRINCIPLE

22. Under the Act and the Regulations, in deciding this application, the ZBA must balance the regional need for low and moderate income housing against any local objection to the proposed plan. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass 339 (1973). If a comprehensive permit is granted with conditions, those conditions must not render the project uneconomic.

V. JURISDICTIONAL ELEMENTS (760 CMR 31.01(1) and 31.02(1))

23. Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

a. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;

b. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and

c. The applicant must "control the site." 760 CMR 31.01(1).

24. As discussed more fully below, the ZBA finds that the Applicant has provided sufficient information to meet these jurisdictional requirements.

(a) **Status of Applicant**

25. Pursuant to the Regulations, an applicant for a comprehensive permit must be a public agency, a non-profit organization, or a limited dividend organization. 760 CMR 31.01(1)(a). The Applicant proposes to satisfy this criterion by means of a limited dividend organization which agrees to legally bind itself to limit the profit it derives from a comprehensive permit development. As the proposed Revised Project encompasses both a "rental" component and a "for sale" component, this criterion will be satisfied through the execution of one or more Regulatory Agreements between the subsidizing agency and the Applicant. The Regulatory Agreement for the "rental" portion of the Revised Project at a minimum shall stipulate that the Applicant's profit, cash flow and distribution of return to the Applicant or to the members, partners, shareholders, or other owners of the Applicant will be limited as set forth in the applicable equity and limited dividend policy of the subsidizing agency, and shall provide mechanisms to enforce this requirement. The Regulatory Agreement for the "for sale" portion of the Revised Project at a minimum shall stipulate that the Applicant's profit from the development shall be limited to 20% of the development costs, and shall provide mechanisms to enforce this requirement.

26. In the application submitted to the ZBA, the Applicant is identified as Woodlands at Laurel Hill, LLC, a Massachusetts limited liability company, which has a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, and which has managers David E. Hale and George A. Robb (Hearing Exhibit 3, Tab 22). The corporate records at the office of the Secretary of the Commonwealth reflect that Woodlands at Laurel Hill, LLC, acts by and through the following persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property: David E. Hale, Mark B. Brooks, John B. Amaral, and George A. Robb.

27. Accordingly, for purposes of this application, the ZBA considers Woodlands at Laurel Hill, LLC to be the Applicant under this application. To ensure that this entity complies with the jurisdictional requirements of the Regulations and will execute a suitable Regulatory Agreement or Agreements pursuant to this Comprehensive Permit, the ZBA has incorporated conditions below designed to limit the profit which the Applicant derives from this Comprehensive Permit development and to suitably monitor and enforce that limitation. The required Regulatory Agreement(s) and other transactional documents required by this Decision shall be executed by all persons duly authorized and necessary to bind Woodlands at Laurel Hill, LLC to the terms thereof.

(b) Public Subsidy Requirement

28. A housing development being proposed under a comprehensive permit application must be subsidized under a low and moderate income housing subsidy program. Here, the Applicant has submitted both an initial project eligibility letter, dated September 23, 2004, and a supplemental project eligibility letter for Lot 4, dated July 14, 2005, from Massachusetts Development Finance Agency ("MassDevelopment") (Hearing Exhibits 3 (Tab 13) and 131), a public finance agency that provides below-market financing for the development of affordable housing across the Commonwealth.

29. The ZBA finds that, taken together, these project eligibility letters substantially comply with the project subsidy requirement set forth in the Regulations, 760 CMR 31.01(2).

(c) Site Control Issues

30. To be eligible to obtain a comprehensive permit under Chapter 40B, an applicant must demonstrate that it holds legal title to the property that is the subject of the application, or that it otherwise has a sufficient legal right to acquire title to the property, such as under a purchase and sale agreement.

31. Here, the Applicant has presented evidence that Recreation Realty Trust LLC ("RRT") and its principals have assembled the following Deeds and Purchase and Sale Agreements (the "RRT Agreements") to purchase various real properties in Acton and Westford which, taken together, comprise all of the land and real property interests that are the subject of the comprehensive permit applications for the Revised Project in Acton and Westford (the "Property") (Hearing Exhibits 3 (Tab 22), 22, 183, 188, 189, and 190):

THE WOODLANDS - TITLE INFORMATION (AS OF 11-22-05)

ORIGINAL OWNER	ADDRESS	CURRENT OWNER	LEGAL DESCRIPTION	EVIDENCE OF CONTROL
Nagog Development	80-82 Nagog Park	RRT, LLC	Book 44723, Page 420	(A) Deed
Lelivre	18 Durkee Lane (Westford)	Brooks, Amaral, Hale, Robb	Book 19190, Page 55	(B) Deed (C) P&S to RRT
Ciccone	5 Durkee Lane (Westford)	Ciccone	Book 4754, Page 42	(D) P&S to RRT
Welch	Land in Acton & Westford	Welch	Book 2330, Page 596	(E) P&S to RRT
LaDuke	12 Durkee Lane (Acton & Westford)	LaDuke	(Acton)Book 22503, Page 329 (Westford)Book 3525, Page 299	(F) P&S to RRT
Lukas	24 Durkee Lane	Brooks	(Acton) Book 19584, Page	(G) P&S to RRT

ORIGINAL OWNER	ADDRESS	CURRENT OWNER	LEGAL DESCRIPTION	EVIDENCE OF CONTROL
	(Acton & Westford)	Amaral, Hale, Robb	283 (Westford) Book 19584, Page 235 and Cert of Title # 35619	
Black	18 Durkee Lane (Westford)	Brooks, Amaral, Hale, Robb	Book 19190, Page 001	(H) Deed (I) P&S to RRT

32. In turn, RRT as Seller has executed Purchase and Sale Agreements with the Applicant Woodlands at Laurel Hill, LLC, as Buyer for the foregoing Property (Hearing Exhibits 191) (the "Woodlands Agreement").

33. The RRT Agreements and the Woodlands Agreement each allow an extended closing date that is after the date of this Decision. During the public hearings, the Applicant provided evidence that RRT and the Applicant have, respectively, satisfied any conditions precedent for the extended closing dates to be in effect.

34. Accordingly, the ZBA finds that, as of the date of issuance of this Comprehensive Permit, the Applicant has demonstrated that it has a sufficient legal right to acquire title to the Property under the Woodlands Agreements.

VI. APPLICATION REQUIREMENTS

35. In addition to the above jurisdictional requirements, an applicant for a comprehensive permit must comply with both the DHCD and the ZBA Regulations governing the content of a comprehensive permit application. Under these regulations, an application must contain certain documentation and plans. See, 760 CMR 31.02(a)-(h), and ZBA Local Regulations.

36. The Applicant initially requested waivers from a number of application requirements in the DHCD and/or ZBA Regulations. During the course of the public hearings, the Applicant submitted a variety of additional information as required by the ZBA. As a result, the list of requested waivers from the application requirements in the ZBA Regulations has been greatly reduced.

37. The ZBA hereby grants waivers from the application requirements in the ZBA Regulations as and to the extent specified in Exhibit A hereto.

38. If and to the extent the application materials as amended and supplemented at the hearings remain deficient and/or a requested waiver has not been granted, any such deficiencies are addressed by the conditions below.

VII. SUMMARY OF DECISION

39. For the reasons stated below, the ZBA approves with the waivers and conditions set forth below the amended application of Woodlands at Laurel Hill, LLC, for a comprehensive permit for the Acton portion of the Revised Project consisting of a 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units under the Act as set forth on and in accordance with the Final Approved Plans identified below.

VIII. THE PROJECT

40. On or about October 7, 2004, the Applicant filed applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals (the "Acton ZBA") and the Westford Zoning Board of Appeals (the "Westford ZBA") for a total of 374 residential rental units (296 in Acton and 78 in Westford), on approximately 74 acres of land located off Nagog Park, a private way within the Town of Acton (the "Project"), as depicted on Plans prepared by Places Site Consultants, Inc. ("Places") dated October 7, 2004, entitled "The Woodlands at Laurel Hill" and by the Martin Architectural Group ("Martin") dated August 5 and18, 2004, entitled "Woodlands at Laurel Hill" (the "Original Plans").

41. On or about March 8, 2005, the Applicant amended its applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton ZBA and the Westford ZBA for a total of 380 residential rental units (296 in Acton and 84 in Westford) and 64 "for sale" townhouse condominium units in Acton. The 64 unit townhouse portion of the Revised Project is depicted on Plans prepared by Places Site Consultants, Inc. ("Places") dated March 8, 2005, entitled "The Woodlands at Laurel Hill" and by the Maguel Architectural Group ("Maguel") dated March 2005, entitled "Woodlands at Laurel Hill" (collectively the "Townhouse Plans"). The Maguel Architectural Floor Plan and Building Elevations, Sheets A-1 to A-3 dated March 2005 are referred to herein as the "Condominium Component Architectural Plans" (Hearing Exhibit 195).

42. The Original Plans plus the Townhouse Plans are collectively referred to in this Decision as the "Revised Plans."

43. On or about July 29, 2005, the Applicant further amended the Revised Plans for the Revised Project, to depict Option 1 and Option 2, as follows:

(a) A plan dated 7-11-05, labeled "revised/updated" intended to incorporate (i) responses to comments from Town boards and Town agents and (ii) adjustments by the applicant ("Option 1"); and

(b) A plan labeled "Proponent's Preferred Plan" dated 7-11-05, which incorporated all of the changes outlined in (a) above but which also

consolidated the 4 apartment buildings, club house and amenities at the entrance of the project into one proposed building of 86 units served by 2 elevators to be 100% ADA accessible ("Option 2").

44. On October 19, 2005, the Applicant submitted to the ZBA the following detailed engineering drawings for the Revised Project based on the Proponent's Preferred Plan (Option 2), prepared by Places Site Consultants, Inc. ("Places") entitled "The Woodlands at Laurel Hill," with inserted plans from Stamski & McNary, Inc. ("Stamski"), Hawk Design, Inc. ("Hawk"), and Rizzo Associates ("Rizzo"), and by Places entitled "Roadway and Utility Improvements, Great Road, Westford Lane, & Durkee Lane" (collectively the "Engineering Drawings") (Hearing Exhibits 154 and 155):[3]

FIRM	SHEET	TITLE	REVISION
Title	Title	The Woodlands at Laurel Hill	October 19, 2005
Places	Note-1	General Notes, Legend & Abbreviations	October 19, 2005
Places	100-SP-1	Master Plan	October 19, 2005
Places	100-A	Key to Parcels Affected by Project	October 19, 2005
Places	100-EC1	Existing Conditions and Demolition Plan	October 19, 2005
Stamski	SM-3221	Record Plan, Sheets 1-6	October 19, 2005
Places	100-SP-1	Site Plan Key Sheet SP-1	October 19, 2005
Places	100-SP-2	Site Plan Sheet SP-2	October 19, 2005
Places	100-SP-3	Site Plan Sheet SP-3	October 19, 2005
Places	100-SP-4	Site Plan Sheet SP-4	October 19, 2005
Places	100-SP-5	Site Plan Sheet SP-5	October 19, 2005
Places	100-GD-1	Grading & Drainage Plan GD-1	October 19, 2005
Places	100-GD-2	Grading & Drainage Plan GD-2	October 19, 2005
Places	100-GD-3	Grading & Drainage Plan GD-3	October 19, 2005
Places	100-GD-4	Grading & Drainage Plan GD-4	October 19, 2005
Places	100-GD-5	Drainage Schedule	October 19, 2005
Places	100-PP-1	Laurel Hill Drive Plan & Profile 0 to 11+0	October 2005
Places	100-PP-2	Laurel Hill Drive Plan & Profile 11+0 to 21+0	October 2005
Places	100-PP-3	Laurel Hill Drive Plan & Profile 21+0 to END	October 2005
Places	100-PP-4	Laurel Hill Drive Terminus Plan	October 2005
Places	100-U-1	Utilities Improvements Plan U-1	October 19, 2005
Places	100-U-2	Utilities Improvements Plan U-2	October 19, 2005
Places	100-U-3	Utilities Improvements Plan U-3	October 19, 2005
Places	100-U-4	Utilities Improvements Plan U-4	October 19, 2005
Places	109-LS-1	Sewer Lift Station Construction Details	October 19, 2005
Places	109-LS-2	Sewer Lift Station Construction Details	October 19, 2005

[3] Sheets 100-GD-1 through 100-GD-4 were revised on November 15, 2005, to add wetland replacation notes (Hearing Exhibit 193). Sheet L-6 was revised on November 4, 2005, to add Sign C (Hearing Exhibit 194).

FIRM	SHEET	TITLE	REVISION
Places	109-LS-3	Sewer Lift Station Construction Details	October 19, 2005
Places	130-D-1	Construction Details & Site Improvements	October 19, 2005
Places	130-D-2	Sewer Details	October 19, 2005
Places	130-D-3	Drainage Details	October 19, 2005
Places	130-D-4	Drainage Details	October 19, 2005
Places	130-D-5	Construction Details & Site Improvements	October 19, 2005
Places	130-D-6	Construction Details & Site Improvements	October 19, 2005
Places	130-ES-1	Erosion and Sedimentation Control Plan	October 19, 2005
Hawk	L-1	Landscape Plan L-1	October 19, 2005
Hawk	L-2	Landscape Plan L-2	October 19, 2005
Hawk	L-3	Landscape Plan L-3	October 19, 2005
Hawk	L-4	Landscape Plan L-4	October 19, 2005
Hawk	L-5	Typical Buildings Landscape Plans	October 19, 2005
Hawk	L-6	Conceptual Signage Plan	October 19, 2005
Hawk	L-7	Irrigation Area Plan	October 19, 2005
Hawk	D-1	Details and Notes	October 19, 2005
Rizzo	W7	Yard Piping Plan	10/17/05
Rizzo	W17	Leachfield Layout & Sections	10/17/05
Places	Title	Roadway and Utility Improvements Great Road, Westford Lane & Durkee Lane	October 19, 2005
Places	Notes – 1	General Notes, Legend & Abbreviations	October 19, 2005
Places	129-EX-1.1	Westford Lane Existing Conditions and Demolition Plan; Plan View 1.1 and Plan View 1.2	October 19, 2005
Places	129-EX-1.2	Durkee Lane Existing Conditions and Demolition Plan; Plan View 2.1	October 19, 2005
Places	129-RD-1.1	Utility Improvements Great Road to Station 0+00	October 19, 2005
Places	129-RD-1.2	Westford Lane Utility Improvements 0+00 to 11+00	October 19, 2005
Places	129-RD-1.3	Westford/Durkee Lane Road & Utility Improvement Plan Station 11+00 to 22+00	October 19, 2005
Places	129-RD-1.4	Durkee Lane Road & Utility Improvement Plan Station 22+00 to 30+50	October 19, 2005
Places	129-D-1	Drainage Details	October 19, 2005
Places	129-D-2	Construction & Utility Details	October 19, 2005
Places	129-D-3	Construction & Utility Details	October 19, 2005
Places	129-D-4	Utility Details	October 19, 2005
Places	129-ES-1	Erosion and Sedimentation Control Plan	October 19,, 2005

45. On or about November 11, 2005, the Applicant submitted to the ZBA the following Architectural Plans for the Rental Component of the Revised Project prepared by Niles Bolton Associates, Inc., entitled "The Woodlands at Laurel Hills, Acton, Massachusetts," (the "Rental Component Architectural Plans") (Hearing Exhibit No. 184):

FIRM	SHEET	TITLE	REVISION
Niles	A0.0	The Woodlands at Laurel Hills	November 11, 2005
Niles	A2.1	Main Building Terrace Floor Building Plan	November 11, 2005
Niles	A2.2	Main Building First Floor Building Plan	November 11, 2005
Niles	12.3	Main Building Second Floor Building Plan	November 11, 2005
Niles	A2.4	Main Building Third Floor Building Plan	November 11, 2005
Niles	A2.5	Main Building Loft Level Building Plan	November 11, 2005
Niles	A2.6	Building Type 105S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.7	Building Type 105S Second Floor Building Plan	November 11, 2005
Niles	A2.8	Building type 105S Third Floor Building Plan	November 11, 2005
Niles	A2.9	Building Type 105S Loft Level & Roof Plan	November 11, 2005
Niles	A2.10	Building Type 140S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.11	Building Type 140S Second Floor Building Plan	November 11, 2005
Niles	A2.12	Building Type 140S Third Floor Building Plan	November 11, 2005
Niles	A2.13	Building Type 140S Loft Level & Roof Plan	November 11, 2005
Niles	A2.14	Building Type 170S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.15	Building Type 170S Second Floor Building Plan	November 11, 2005
Niles	A2.16	Building Type 170S Third Floor Building Plan	November 11, 2005
Niles	A2.17	Building Type 170S Loft Level & Roof Plan	November 11, 2005
Niles	A2.18	Building Type 190S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.19	Building Type 190S Second Floor Building Plan	November 11, 2005
Niles	A2.20	Building Type 190S Third Floor Building Plan	November 11, 2005
Niles	A2.21	Building Type 190S Loft Level & Roof	November 11, 2005

FIRM	SHEET	TITLE	REVISION
		Plan	
Niles	A4.1	Main Building Elevations	November 11, 2005
Niles	A4.2	Main Building Elevations	November 11, 2005
Niles	A4.3	Building Type 105S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.4	Building Type 140S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.5	Building Type 170S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.6	Building Type 190S Front, Rear & Side Elevations	November 11, 2005
Niles	A9.1	4-Bay Garage Plans & Elevations	November 11, 2005
Niles	A9.2	6-Bay & 6-Bay Accessible Garages Plans & Elevations	November 11, 2005
Niles	A9.3	Recycle Center Floor Plan	November 11, 2005
Niles	A9.4	Recycle Center Elevations	November 11, 2005
Niles	A9.5	Maintenance Building Floor Plan & Roof Plan	November 11, 2005
Niles	A9.6	Maintenance Building Elevations	November 11, 2005

46. As most recently amended by and shown on the Engineering Drawings and the Rental Component Architectural Plans, the "rental" portion of the Revised Project in Acton consists of one main residential building of 86 rental units with a club house, pool, community center and associated amenities, and seven other residential buildings housing a total of 210 rental units, for an overall total of 296 residential rental units, parking, and associated access and egress drives, infrastructure, and improvements, all as shown on the Engineering Drawings and the Rental Component Architectural Plans (the "Rental Component").

47. As most recently amended by and shown on the Engineering Drawings and the Condominium Component Architectural Plans, the "for sale" portion of the Revised Project consists of eighteen residential townhouse buildings housing two, three or five units each, parking, and associated infrastructure, all as shown on the Engineering Drawings and the Condominium Component Architectural Plans (the "Condominium Component").

48. Each of the 296 rental units in the Revised Project will have one or two bedrooms. Each of the 64 townhouse condominium units in the Revised Project will have two bedrooms.

49. The Acton portion of the Site at issue in the present case is located within an Office Park 1 and 2 Districts and a Residence 10/8 Zoning District, and a portion of the Site is located within an Affordable Housing Overlay Subdistrict "A."

IX. CONCLUSORY FINDINGS

50. Based on the evidence presented by the Applicant, local boards and officials, various consultants, and interested parties at the public hearings, the ZBA finds as follows:

a. Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum criteria, after which the Town would have its normal powers to apply its own bylaws, requirements and regulations to this application.

b. The proposed Revised Project (as depicted on the Engineering Drawings) will, when conforming to the conditions set forth in this Decision, adequately provide for traffic circulation, storm water drainage, sewerage, and water, without an undue burden on the occupants of the Revised Project or on the surrounding neighborhood or the Town.

c. The proposed Revised Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Revised Project, the neighborhood, or the Town.

d. The proposed Revised Project on the Site is supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this Decision, (ii) would represent a reasonable accommodation of the regional need for low and moderate income housing, and (iv) would be consistent with local needs within the meaning of Massachusetts General Laws, Chapter 40B, Section 20.

X. WAIVERS FROM LOCAL BYLAWS AND REGULATIONS

51. The Applicant initially requested waivers from a number of local bylaws and regulations. During the course of the public hearings, the Applicant revised its plans in a number of specific and material respects in response to comments by the ZBA, various Town boards and officials and the public. As a result, the list of requested waivers from local bylaws and regulations has been greatly reduced.

52. The ZBA finds as follows with respect to the remaining requested waivers from local bylaws and regulations with respect to the Revised Project as shown on the Final Approved Plans:

A. Acton Zoning Bylaw

53. The ZBA grants the waivers from the Acton Zoning Bylaw specified on Exhibit B hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

B. Acton Wetlands Bylaw

54. The ZBA grants the waivers from the Acton Wetlands Bylaw specified on Exhibit C hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

C. Acton Board of Health Regulations

55. The ZBA grants the waivers from the Acton Board of Health Regulations specified on Exhibit D hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

D. Acton Subdivision Regulations

56. The ZBA grants the following waivers from the Acton Subdivision Regulations specified on Exhibit E hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

E. Waivers Not Listed

57. By granting the waivers from local bylaws and regulations listed on Exhibits B-E, it is the intention of this Comprehensive Permit to permit construction of the Revised Project as shown on the Final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Building Commissioner determines that any additional waiver from local zoning, wetlands, health or subdivision regulations is necessary to permit construction to proceed as shown on the Final Approved Plans, the Building Commissioner shall proceed as follows: (a) any matter of a *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. If a matter is shown on the Final Approved Plans, it shall be deemed *de minimis* unless the matter would result in an adverse impact on public health, safety, welfare or the environment.

XI. CONDITIONS ATTACHED TO COMPREHENSIVE PERMIT

58. The Revised Project represents a significant development in the Town of Acton and the abutting Town of Westford. It consists of hundreds of new residential units and associated infrastructure and improvements. Given the size, complexity and location of the Revised Project, the ZBA finds that a number of specific and material conditions are required to mitigate potentially adverse effects from the Revised Project on the Town of Acton, residents of the Revised Project, and the public health, safety, welfare and the environment. As conditioned below, the ZBA finds that the Revised Project's potential adverse effects will be suitably mitigated.

59. Accordingly, the ZBA grants the Applicant's request for a comprehensive permit for the Revised Project in Acton consisting of a 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units in accordance with the Final Approved Plans on the Site under the Chapter 40B, subject to each and every one of the following conditions:

Definitions

60. As used in these conditions, the term:

- "Rental Component" shall refer to the rental portion of the Revised Project in Acton consisting of (a) one main residential building of 86 rental units with a club house, pool, community center and associated amenities, and seven other residential buildings housing a total of 210 rental units, for an overall total of 296 residential rental units, parking, and associated and access and egress drives, infrastructure, landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans (the "Rental Component").

- "Condominium Component" shall refer to the for sale portion of the Revised Project in Acton consisting of the a total of 64 residential townhouse units in eighteen townhouse residential buildings housing two, three or five units each, together with parking, access and egress drives, and associated infrastructure, landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans.

- "Both Components" shall refer to the Rental Component and the Condominium Component.

- "Final Approved Plans" shall refer to the final set of Revised Plans, Engineering Drawings, and Architectural Plans showing the Rental Component and the Condominium Component of the Revised Project, updated in accordance with this Decision, signed and stamped by the Design Engineer, and endorsed by the ZBA in accordance with Condition A.1 below.

- "Revised Project" shall refer to the proposed project consisting of the Rental Component and the Condominium Component shown on the Final Approved Plans.

- "Design Engineer" shall refer to the registered professional engineer or engineers and the registered land surveyor who stamped the Final Approved Plans, or, in the event any of them cease to serve the Applicant with respect to the Revised Project, their permitted successors as approved by the ZBA.

A. General Conditions

A.1 Prior to commencement of any construction concerning any portion of the Revised Project (whether pursuant to a building permit or otherwise), unless extended by the Building Commissioner for good cause shown the Applicant shall submit to the Building Commissioner a final set of Engineering Drawings and Architectural Plans showing the Rental Component and the Condominium Component of the Revised Project, which shall be identical to Hearing Exhibits 154, 155, 184 and 195 except that they shall be updated in accordance with the requirements of this Decision. Along with this final set of Engineering Drawings and Architectural Plans, the Applicant shall submit a list, prepared by the Design Engineer, of the specific changes made to Hearing Exhibits 154, 155, 184 and 195 to conform the requirements of this Decision. The final set of Engineering Drawings and the list of changes shall be signed and stamped by the Design Engineer. The Building Commissioner shall review the final set of Engineering Drawings and Architectural Plans and the list of changes to ensure that they are consistent with and in conformity with this Decision. Upon the Building Commissioner so finding, the ZBA shall endorse the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the "Final Approved Plans" under this Decision.

A.2 Without limitation, when updating the Final Approved Plans in accordance with condition A.1, the Applicant shall make all of the changes to the Engineering Drawings as recommended by the Engineering Department in its Inter-Departmental Communication to the ZBA dated December 7, 2005, summarizing the consensus between the Town Engineer and the Applicant's Engineer with respect to engineering issues (Hearing Exhibit 186), and as required by this Comprehensive Permit.

A.3 In the event the Building Commissioner determines that the Applicant's construction drawings submitted with its building permit application(s) materially deviate from the Final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Comprehensive Permit Decision, the Building Commissioner shall so notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this decision in accordance with 760 CMR 31.03. In the event of a disagreement between the Building Commissioner and the Applicant with respect thereto, they shall notify the ZBA which shall thereupon determine whether the building permit construction drawings conform to this Decision. Upon finding that the building permit construction drawings (with any necessary revisions) do conform to this Decision, the ZBA shall endorse those construction drawings if so requested by the Applicant.

A.4 This Decision, Record Plan, Sheets 1-6, prepared by Stamski & McNary, Inc., of the Final Approved Plans (the endorsed perimeter lot conveyancing plans), and the Memorandum of Agreement dated March, 2005, and all amendments thereto, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton,. shall be (a) recorded by the Applicant at the Middlesex South District Registry of Deeds and filed by the Applicant with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded by the Applicant at the Middlesex North District Registry of Deeds and filed by the Applicant with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. This Decision shall become effective upon such recording and filing, as applicable. Official proof of recording and filing of each of these documents, as applicable, shall be forwarded to the Building Commissioner prior to issuance of a building permit or to the start of construction. If necessary for purposes of such recording and filing, the Acton Planning Board or the Town Planner shall ministerially endorse Record Plan, Sheets 1-6 of the Final Approved Plans for recordation purposes only.

A.5 The Applicant shall comply with all local rules and regulations of the Town of Acton and its boards and commissions unless waived herein or as otherwise addressed in these conditions.

A.6 Except as may be expressly waived or defined herein, the Applicant shall pay to the Town of Acton all fees required by the Town of Acton imposed generally in respect of construction projects including all required fees for building permits and inspections.

A.7 The Applicant shall copy the Building Commissioner on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Revised Project.

A.8 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner.

A.9 The Applicant shall maintain a copy of the endorsed Final Approved Plans and this Decision at the Site during construction.

A.10 If, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting, the Applicant shall obtain temporary easements or other written permission from any abutting property owner.

A.11 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Revised Project and the use of the land does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to this Comprehensive Permit Decision shall be incorporated in the every deed conveying all or any portion of the Rental Component of the Site, and in the Master Deed and in each Unit Deed for the Condominium Component of the Revised Project.

A.12 This Decision permits the construction, use, and occupancy of (a) 296 rental units in the Revised Project each of which will have one or two bedrooms, (b) 64 townhouse condominium units in the Revised Project each of will have two bedrooms, and (c) associated facilities and improvements as depicted on the Final Approved Plans to be submitted and endorsed in accordance with this Decision. The construction and use of the Site shall be in conformity with this Decision and the Final Approved Plans, and there shall be no further subdivision of the Site, or the creation of additional housing units or any other structures or infrastructure on the Site except that which is shown on the Final Approved Plans, without further approval of the ZBA in the form of an amendment to this Decision. The ZBA acknowledges that, for purposes of financing the Revised Project, it may be necessary or convenient, subject to further proceedings before the ZBA, to allow further subdivision of the Revised Project within the site by a suitable amendment of this Comprehensive Permit in the future.

B. <u>Submission Requirements</u>

B.1 <u>Pre-Construction Submissions for Rental Component</u>:

Before the Applicant begins any construction of the buildings and units in the Rental Component of the Revised Project, the Applicant shall have:

a. Delivered to the Building Commissioner from a public or private financing institution, or institutions, a written commitment to provide the major portion of the financing required for the Rental Component of the Revised Project as approved by this Decision, or other reasonable evidence of suitable funding;

b. Delivered to the Building Commissioner the organization papers of the non-profit or limited dividend organization which will construct the Rental Component of the Revised Project and a certified copy of any determination by the Applicant's Subsidizing Agency (if required thereby) that the organization qualifies as a non-profit or limited dividend organization within the meaning of the Act and what the limitation on dividend is;

c. Delivered to the Building Commissioner a certified copy of the Regulatory Agreement and the Monitoring Services Agreement for the Rental Component of the Revised Project;

d. Obtained and filed with the Building Commissioner a copy of all federal, state and local permits and approvals required for the Rental Component of the Revised Project including, without limitation, (a) the Comprehensive Permit issued by the Westford Board of Appeals for the portion of the Revised Project in Westford, (b) the Certificate of the Secretary of Environmental Affairs approving the Revised Project, (c) the Groundwater Discharge Permit issued for the Revised Project's sewage treatment plant, and (d) any other state or local permits required for the Revised Project's sewage treatment plant in Westford to receive, treat and dispose of effluent from the Acton portion of the Revised Project.

e. Obtained all necessary building, electrical, plumbing and associated permit(s) for the proposed work on the Rental Component of the Revised Project required by state law.

f. Delivered to the Building Commissioner a registry-stamped copy of a Conservation Restriction, mutually acceptable to the Applicant and the Acton Conservation Commission, covering the area of the Site in the vicinity of the detention basin shown on the Final Approved Plans to be subject to such a restriction. The terms of this conservation restriction shall be agreed upon by the Applicant and the Conservation Commission during the Commission's review of the Revised Project under the state wetlands protection act. In the event the Applicant and the Conservation Commission do not reach agreement on the terms of this restriction during that process, the Applicant shall forthwith notify the ZBA which shall treat this fact as a project change triggering the procedures in 760 CMR 31.03(3).

B.2 Pre-Construction Submissions for Condominium Component:

Before the Applicant begins any construction of the buildings and units in the Condominium Component of the Revised Project, the Applicant shall have:

a. Delivered to the Building Commissioner from a public or private financing institution, or institutions, a written commitment to provide the major portion of the financing required for the Condominium Component of the Revised Project as approved by this Decision, or other reasonable evidence of suitable funding;

b. Delivered to the Building Commissioner the organization papers of the non-profit or limited dividend organization which will construct the Condominium Component of the Revised Project and a certified copy of any determination by the Applicant's Subsidizing Agency (if required thereby) that the organization qualifies as a non-profit or limited dividend organization within the meaning of the Act and what the limitation on dividend is;

c. Delivered to the Building Commissioner a certified copy of the Regulatory Agreement and the Monitoring Services Agreement for the Condominium Component of the Revised Project;

d. Obtained and filed with the Building Commissioner a copy of all federal, state and local permits and approvals required for the Condominium Component of the Revised Project including, without limitation, (a) the Comprehensive Permit issued by the Westford Board of Appeals for the portion of the Revised Project in Westford, (b) the Certificate of the Secretary of Environmental Affairs approving the Revised Project, (c) the Groundwater Discharge Permit issued for the Revised Project's sewage treatment plant, and (d) any other state or local permits required for the Revised Project's sewage treatment plant in Westford to receive, treat and dispose of effluent from the Acton portion of the Revised Project.

e. Obtained all necessary building, electrical, plumbing and associated permit(s) for the proposed work on the Condominium Component of the Revised Project required by state law.

f. Delivered to the Building Commissioner a registry-stamped copy of a Conservation Restriction, mutually acceptable to the Applicant and the Acton Conservation Commission, covering those areas of the Site shown on the Final Approved Plans to be subject to such a restriction. The terms of this conservation restriction shall be

agreed upon by the Applicant and the Conservation Commission during the Commission's review of the Revised Project under the state wetlands protection act. In the event the Applicant and the Conservation Commission do not reach agreement on the terms of this restriction during that process, the Applicant shall forthwith notify the ZBA which shall treat this fact as a project change triggering the procedures in 760 CMR 31.03(3).

B.3 As Built Plans: Separate "As Built Plans" shall be submitted to the Building Commissioner as follows:

a. for the Condominium Component of the Revised Project, prior to the occupancy or use of the final building constituting a part of the Condominium Component of the Revised Project, and

b. for the Rental Component of the Revised Project, prior to the occupancy or use of the final building constituting a part of the Rental Component of the Revised Project.

The "As Built Plans" shall show all binder coat pavement, buildings, drainage structures, and other infrastructure and utilities (excluding landscaping) as they exist on the Site, above and below grade, including appropriate grades and elevations as of the time the plans are required to be submitted under this Condition B.3 (and subject to updating upon final completion of the Revised Project). The "As Built Plans" shall be signed and stamped by the Design Engineer, certifying that the Revised Project in Acton as built conforms and complies with the conditions of this Comprehensive Permit. [The purpose of this provision is to facilitate the Building Inspector's review of the project for compliance with the Comprehensive Permit before the final occupancy permit is issued.] The as-built utilities sheet(s) shall include both plan and profile views showing actual in-ground installation of all utilities for the Revised Project in Acton and Westford, and shall be submitted to the Building Commissioner and the Department of Public Works after completion of construction.

B.4 As Built Plans for Westford Portion of Revised Project: For the Westford portion of the Revised Project, accurate as-built plans shall be submitted to the Acton Building Commissioner for the treatment plant and all utilities and infrastructure serving any portion of the Revised Project in Acton.

C. **Site Development Construction Conditions**

C.1 The Applicant shall cause construction drawings to be prepared consistent with this Decision and the Final Approved Plans.

C.2 The Applicant shall obtain all building permits and occupancy permits that may be required by the State Building Code.

C.3 The Applicant shall permit ZBA representatives access to the Site to observe and inspect the Site and construction progress until such time as the Revised Project has been completed.

C.4 The Applicant shall submit a construction and permitting schedule prior to the start of construction and annually thereafter to the Building Commissioner to assist in project status update and review.

C.5 The Applicant shall forward final architectural plans to the Building Commissioner at the time of applying for building permits. All construction shall be inspected by the Building Commissioner and shall be in compliance with all Massachusetts State Building Code requirements.

C.6 The Applicant shall provide temporary central mailbox units (CMU) for any project residents during project construction. These CMU's shall be approved as to style and location by the local Postmaster General of the United States Post Office. Post Office authorization shall be forwarded to the Building Commissioner for the record.

C.7 The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.

C.8 Hours - The hours of operation for any construction activities on-site shall be between 7:00 am and 7:00 pm, Monday thru Friday, 8:00 am and 5:00 pm on Saturdays, and no work shall be allowed on-site on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts.

C.9 Dust - The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's Dust regulations at 310 CMR 7.09, as amended, as directed by the Building Commissioner or the Town Engineer, even though other work on the project may be suspended as a result thereof. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.

C.10 Noise - The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies, including without limitation DEP's Noise regulations at 310 CMR 7.10, as amended, and DEP's DAQC Noise Policy No. 90-001 (2/1/90), as amended. The

Applicant shall cease any excessively loud activities when directed by the Building Commissioner to comply therewith.

C.11 Vibration - The Applicant shall implement necessary controls to ensure that vibration does not unreasonably extend beyond the subject site and create a nuisance or hazard for property abutters.

C.12 Traffic - The Applicant shall comply with all construction-related traffic safety conditions set forth in Section E below.

C.13 Roads – The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Common Infrastructure Agreements required by this Decision are recorded and/or registered as applicable and the Condominium Association has been legally established for the Condominium Component of the Revised Project.

C.14 Burial of any stumps or debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.

C.15 Soil material used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be certified by the Design Engineer to the Building Commissioner as meeting design specifications.

C.16 Utilities, including but not necessarily limited to electric, cable, and telephone shall be located underground.

C.17 Stabilization Requirements - No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

C.18 Construction vehicles shall be parked on the Site, and off Nagog Park and Route 2A-119 at all times.

D. <u>Police, Fire and Emergency Safety Conditions</u>

D.1 Based on the unique size, type, location, density, and access to the Revised Project, the ZBA imposes the condition that, as mitigation of potential public safety issues associated with the proposed project, the Applicant shall conform to the requirements of the Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board

of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton A true copy of that Memorandum of Agreement with all amendments is attached hereto as Exhibit F and incorporated herein by reference.

D.2 Each building in the Revised Project shall be equipped with an approved system of automatic sprinklers in accordance with the provisions of the state building code, 780 CMR 904.7, and G.L. c. 148, s. 26(I), as applicable.

D.3 The Applicant shall include in every lease or other rental agreement for units in the Revised Project located in Acton and Westford the following caveat:

> "The Town of Acton and the Town of Westford currently have no Mutual Aid Agreement with respect to the provision of police, fire, ambulance and other emergency services. E-911 calls from units in Westford will be routed to Westford emergency services and those made from units in Acton will be routed to Acton emergency services. Neither Town has the responsibility to provide police, fire, ambulance, nor other emergency response to residential units in the other Town except as may be provided for in the State mutual aid statues."

This condition shall remain in effect so long as there remains no Mutual Aid Agreement or other Inter-Municipal Agreement in effect with respect to police, fire, ambulance and other emergency services between the Towns of Acton and Westford.

D.4 The Applicant shall use its best efforts to ensure that all providers of telephone landline service to units located in Westford shall route all E-911 calls from units located in Westford to Westford emergency services.

D.5 The Applicant shall obtain approvals from the Acton Engineering Department, Police Chief, and Fire Chief on the street addresses for all buildings and units in the Revised Project. The Applicant shall use its best efforts to work with Town officials in both Acton and Westford to ensure that all buildings and units in the Revised Project in Acton and Westford are assigned unique and unambiguous addresses to avoid any confusion of addresses with other streets having the same or similar names in Acton or Westford.

D.6 Each building and unit in the Revised Project shall be equipped with fire detection systems and shall comply with the applicable state Building Code and Fire Safety Code provisions. The fire detection system for each building and unit in the Revised Project in Acton shall be subject to the

approval of the Acton Fire Chief consistent with his authority under said Codes. (Any fire detection system for buildings and units in the Revised Project in Westford shall be subject to the approval of the Westford Fire Chief consistent with his authority under said Codes.)

D.7 Each municipal fire alarm street box for the Revised Project in Acton shall be located in an area acceptable to the Acton Fire Chief, where it will be readily accessible but not be susceptible to damage by snow plows in the winter months, and shall be tied to the Acton dispatch system. Each fire alarm master box on the buildings in the Revised Project in Acton shall be located in an area acceptable to the Acton Fire Chief and shall be tied to the Acton dispatch system.

D.8 Each municipal fire alarm street box for the Revised Project in Westford shall be located in an area acceptable to the Westford Fire Chief, where it will be readily accessible but not be susceptible to damage by snow plows in the winter months, and shall be tied to the Westford dispatch system. Each fire alarm master box on the buildings in the Revised Project in Westford shall be located in an area acceptable to the Westford Fire Chief and shall be tied to the Westford dispatch system.

D.9 The Applicant shall construct and maintain a locked and gated emergency access on Lot 18 on Assessor's Map B-5 to connect Nagog Park to Nonset Path for use only in the event of emergencies by Acton and/or Westford police, fire, ambulance or other emergency services. The Applicant shall provide appropriate keys or other means of access to Acton and Westford police, fire, ambulance and other emergency services. The design and construction of the emergency access shall be acceptable to the Acton Fire Chief. The Applicant shall provide in its project documents governing infrastructure improvements for the maintenance of this emergency access over time such that it is appropriately passable in the event of an emergency.

D.10 A licensed blasting professional shall do any necessary blasting on the site after proper pre-blast inspections have been conducted and all required permits have been obtained from the Acton Fire Department. Pursuant to G.L. c. 148, § 19, before the issuance of a permit to use an explosive in the blasting of rock or any other substance at the Site, the applicant for the permit shall file with the Acton Town Clerk a bond running to the Town, with sureties approved by the treasurer of the Town, in the penal sum as the officer granting the permit shall determine in accordance with § 19 to be necessary in order to cover the risk of damage that might ensue from the blasting or its keeping therefor.

E. Traffic Safety Conditions

E.1 The Applicant shall provide a safe school bus stop, in a location acceptable to the Acton School Committee or its designee, for children who reside in the Revised Project and who attend public school in Acton.

E.2 Traffic signage shall be consistent with the requirements of the current edition of the Manual for Uniform Traffic Control Devices (MUTCD).

E.3 Appropriate driveways, sidewalks and curbing, sufficient for the safe separation of pedestrians from moving vehicles, shall be provided throughout the Site to allow safe vehicular and pedestrian access within the site and between all units.

E.4 The Applicant shall install stop sign and stop bar controls of exit movements from the Revised Project Driveways' "T" intersections with Nagog Park and Westford Lane.

E.5 All such improvements shall be completed in accordance with the standards set forth in the most recent edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), and shall be in place prior to project occupancy.

E.6. During construction of the Revised Project, the Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the Site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional construction-related traffic mitigation measures may be required as necessary, or as directed by the Building Commissioner.

E.7 Subject to the approval of the Massachusetts Highway Department, the Applicant shall implement the following traffic mitigation measures at the intersections of Great Road and Nagog Park in accordance with the Report prepared by Vanasse & Associates, Inc., dated April 15, 2005 (Hearing Exhibit 90): (a) the existing traffic signal phasing will be modified to provide a westbound right-turn overlap for vehicles exiting the site (Hearing Exhibit 90, page 9), and (b) the signal timing shall be modified to optimize traffic operations on all approaches (Hearing Exhibit 90, page 9). The Applicant shall use its best efforts to pursue the approval of the Massachusetts Highway Department for such traffic mitigation measures. The obligations contained in this condition shall expire three years after the issuance of the first building permit for the Revised Project if, despite such best efforts, the Massachusetts Highway Department has not approved such traffic mitigation measures. While this condition is in effect, the Applicant shall provide annual updates to the Board (with a

copy to the Board of Directors of Nagog Woods) as to the status of compliance with this condition summarizing any significant meetings, correspondence and/or report submissions, and any MassHighway responses thereto, since the previous annual report.

F. **Common Infrastructure Agreements**

F.1 Because (a) the Revised Project is located in two Towns, Acton and Westford, (b) the Revised Project includes both a Condominium Component (containing condominium units that will be sold to individual owners and common areas and facilities that will be governed and controlled by the provisions of a Master Deed and By-Laws of the Condominium Association representing the unit owners) and a Rental Component (containing apartment units that will be rented to individual owners and common areas and facilities that will be governed and controlled by the legal entity owning and managing the rental), and (c) certain infrastructure and facilities are common to the development of Both Components of the Revised Project and to the development in both Towns, the Applicant shall establish a Master Declaration of Trust, a Reciprocal Easement Agreement and/or a Treatment Plant Operating Agreement (hereinafter collectively referred to as the "Common Infrastructure Agreements" or "CIA").. The ZBA recognizes that the Common Infrastructure Agreements may govern separate aspects of the Revised Project (such as the Operating Agreement for the treatment plant); provided, however, that the Common Infrastructure Agreements shall, in the aggregate, govern all common infrastructure and facilities for the entire Revised Project in both Acton and Westford.

F.2 The CIA shall, at a minimum, allocate binding legal rights and responsibilities between and among the legal entity owning the Condominium Component (who will in turn duly transfer such rights and responsibilities to the Condominium Association upon its creation) and the legal entity owning and managing the Rental Component of the Revised Project in both Towns for all aspects of establishing, approving, funding, designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, inspecting, repairing, replacing, altering, extending, and removing the following infrastructure and common elements of the Revised Project (collectively the "Common Facilities"):

a. wastewater treatment and disposal facilities (including, without limitation, the treatment plant, piping, leaching fields and other facilities and appurtenances),

b. public water supply facilities.

c. storm water management and drainage facilities (including, without limitation, any detention or retention basins, discharge outfalls or inlets, and storm water control structures and pipes),

d. utilities of all types and kinds including, without limitation, electric, gas, telephone and cable,

e. landscaping and landscape irrigation facilities,

f. roadways, driveways, sidewalks parking and emergency access facilities (including, without limitation, repaving and repair, snow and ice removal, and removal of any obstructions),

g. exterior architectural features,

h. solid waste management, collection, recycling, removal and disposal,

i. school bus stop facilities,

j. on-site conservation, community garden and recreation facilities, and

k. any and all other functions and/or facilities that may be necessary or desirable in order to operate the development as a whole.

F.3 The CIA shall be (a) recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any building or unit within the Revised Project.

F.4 The CIA shall run with the land which is the subject of the development, and shall be binding on the owners of the land, and their successors and assigns, in perpetuity.

F.5 The CIA shall promulgate rules and regulations to govern all aspects of establishing, approving, funding, designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, inspecting, repairing, replacing, altering, extending, and removing the Common Facilities.

F.6 The CIA shall promulgate rules and regulations to govern assessing and collecting funds and establishing reasonable reserves sufficient for its purposes from the Condominium Association and the owner of the Rental Component of the Revised Project, including the right to enforce these collections by prescribed legal methods.

F.7 The CIA shall be fully consistent with both the conditions imposed by this Decision and the conditions imposed by the Westford Zoning Board of Appeals as set forth in its Comprehensive Permit for the Westford portion of the Revised Project.

F.8 The CIA shall irrevocably grant to the Town of Acton and its employees, agents, boards, commissions, and consultants the right to:

a. enter onto the Site in both Acton and Westford,

b. inspect all aspects of the Common Facilities in both Acton and Westford,

c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and

d. ensure that the Trust or other legal entity or entities established by the CIA is/are fully and effectively performing all of its/their obligations with respect to the Common Facilities in both Acton and Westford.

F.9 Without limitation, the CIA shall irrevocably grant to the Town of Acton Board of Health and its employees, agents and consultants the right to inspect and to obtain samples from the sewage treatment plant and all facilities, equipment, discharge points, and any monitoring wells associated therewith, and shall irrevocably consent to the Acton Board of Health's right to enforce all applicable environmental and health laws, rules, regulations, and conditions of governmental permits and approvals applicable to the sewage treatment plant serving the residential units in Acton. With respect to a matter under the jurisdiction of the Massachusetts Department of Environmental Protection ("DEP"), in the event of a conflict between or among DEP, the Acton Board of Health and the Westford Board of Health as to appropriate enforcement under this paragraph, the determination of DEP shall control.

F.10 Except for conservation restrictions that may be accepted by governmental or non-profit entities, the Common Facilities shall remain private and the Town of Acton shall not have any legal responsibility, now or in the future, for designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, repairing, replacing, altering, extending, and/or removing the Common Facilities.

G. Condominium Association

G.1 For the Condominium Component of the Revised Project, the Applicant shall establish a condominium owners' association (the "Condominium Association") for the 64 condominium units, common areas and facilities that will be governed and controlled by the provisions of a condominium Master Deed and By-Laws.

G.2 The Master Deed and Bylaws of the Condominium Association shall reference and be subject to the CIA and this Comprehensive Permit Decision.

G.3 In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deed, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units.

G.4 The Master Deed for the Condominium Component shall be recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, and (b) to the extent any portion of the Condominium Component of the Revised Project is situated in Westford, recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any Condominium Unit within the Condominium Component of the Revised Project.

G.5 Review of Condominium Documents: Prior to execution and recording of the Master Deed for the Condominium Component and the related documents establishing the condominium, the Applicant shall furnish drafts to Town Counsel for his review as to their consistency with this Decision.

H. Rental Component - Management Entity

H.1 For the Rental Component of the Revised Project, the Applicant (or its successors and assigns) shall either self-manage or shall establish or shall contract with a qualified management entity that shall be subject to and governed by the provisions of this Decision, the CIA, and by By-Laws established pursuant thereto.

H.2 Every deed of all or any portion of the land within the Rental Component of the Revised Project shall reference and be subject to this Decision and the CIA.

I. Surety & Covenants – Common Facilities

I.1 To provide guidance to the Building Commissioner as to when in the construction sequence occupancy permits may issue for separate buildings in the Rental Component of the Revised Project, thereby protecting prospective residents in the project and avoiding disputes with the Applicant, and subject to the requirements of Condition D.1 hereof, the Applicant shall submit to the Building Commissioner a Rental Component Construction Sequencing Plan. With the written approval of the Building Commissioner, which shall not be unreasonably withheld or delayed, the Applicant may modify this Plan so long as the provisions of Conditions I.3, I.4 and I.5 below are satisfied.

I.2 To provide guidance to the Building Commissioner as to when in the construction sequence occupancy permits may issue for separate buildings in the Condominium Component of the Revised Project, thereby protecting prospective residents in the project and avoiding disputes with the Applicant, and subject to the requirements of Condition D.1 hereof, the Applicant shall submit to the Building Commissioner a Condominium Component Construction Sequencing Plan. With the written approval of the Building Commissioner, which shall not be unreasonably withheld or delayed, the Applicant may modify this Plan so long as the provisions of Conditions I.3, I.4 and I.5 below, as applicable, are satisfied.

I.3 Without limitation, as security for the ongoing completion of the Common Facilities and infrastructure for the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for any building or unit in the Revised Project, and no sale or rental of any unit in the Revised Project shall be permitted until:

a. All wastewater treatment and disposal facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;

b. All public water supply facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;

c. The base and binder course for the roadways, driveways, sidewalks and parking areas serving such building and units as shown on the Final Approved Plans have been installed;

d. All storm water management and drainage facilities serving such building and units as shown on the Final Approved Plans have been installed;

e. All electric utilities serving such building and units as shown on the Final Approved Plans have been installed;

f. All emergency access facilities serving such building and units as shown on the Final Approved Plans have been installed; and

g. For an occupancy permit for any building or unit in the Rental Component of the Revised Project, the Applicant shall have provided to the ZBA a performance guaranty to secure the complete construction of the remaining Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans. Said performance guaranty shall be of a type, in a form, and in an amount as are consistent with the Performance Guaranty Requirements of the Acton Planning Board's Subdivision Rules and Regulations, §§ 6.1-6.2 and shall be released in part or in full in a manner consistent with §§ 6.3-6.4 thereof; provided, however, that all references therein to the Planning Department shall be deemed to refer to the Building Commissioner, and all references therein to the Board shall be deemed to refer to the ZBA for this purpose; and provided further that no reduction in the amount of the performance guarantee shall reduce the performance guarantee to a value below the estimated cost of completing the unfinished portions of the remaining Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans;

h. For an occupancy permit for any building or unit in the Condominium Component of the Revised Project, the Applicant shall have provided to the ZBA a performance guaranty to secure the complete construction of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans. Said performance guaranty shall be of a type, in a form, and in an amount as are consistent with the Performance Guaranty Requirements of the

Acton Planning Board's Subdivision Rules and Regulations, §§ 6.1-6.2 and shall be released in part or in full in a manner consistent with §§ 6.3-6.4 thereof; provided, however, that all references therein to the Planning Department shall be deemed to refer to the Building Commissioner, and all references therein to the Board shall be deemed to refer to the ZBA for this purpose; and provided further that no reduction in the amount of the performance guarantee shall reduce the performance guarantee to a value below the estimated cost of completing the unfinished portions of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans.

I.4 Except as otherwise specifically set forth herein, as security for the final completion of the Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for the final residential building in the Rental Component of the Revised Project, and no rental of any unit therein shall be permitted until:

a. All wastewater treatment and disposal facilities for the Rental Component of the Revised Project have been completed and approved;

b. All public water supply facilities for the Rental Component of the Revised Project have been completed and approved;

c. The final coat of pavement for all roadways, driveways, sidewalks and parking areas for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;

d. All storm water management and drainage facilities for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;

e. All electric utilities for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;

f. All emergency access facilities for the Rental Component of the Revised Project shown on the Final Approved Plans have been installed;

g. All remaining Common Facilities and infrastructure for the Rental Component of the Revised Project shown on the Final Approved Plans has been constructed and or installed.

h. All conditions of the Comprehensive Permit Decision for the Rental Component of the Revised Project that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

I.5 Except as otherwise specifically set forth herein, as security for the final completion of the Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for the final residential building in the Condominium Component of the Revised Project, and no sale of any unit therein shall be permitted until:

a. All wastewater treatment and disposal facilities for the Condominium Component of the Revised Project have been completed and approved;

b. All public water supply facilities for the Condominium Component of the Revised Project have been completed and approved;

c. The final coat of pavement for all roadways, driveways, sidewalks and parking areas for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;

d. All storm water management and drainage facilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;

e. All electric utilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;

f. All emergency access facilities for the Condominium Component of the Revised Project shown on the Final Approved Plans have been installed;

g. All remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project shown on the Final Approved Plans has been constructed and or installed;

h. All conditions of the Comprehensive Permit Decision for the Condominium Component of the Revised Project that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

J. Legal Requirements

J.1 The Applicant and subsequent Owner(s) of all or any portion of the Site shall be bound by all conditions and requirements set forth in this Decision except that those conditions and requirements that apply only to the Condominium Component shall not apply to the Rental Component and those conditions and requirements that apply only to the Rental Component shall not apply to the Condominium Component.. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that the grantee and its successors and assigns shall agree to be bound by the terms and conditions of this Decision.

J.2 This Comprehensive Permit may not be transferred to a person other than the Applicant, or to an entity of which the Applicant's members control less than 50%, without the advance written approval of the ZBA and the execution of any instruments or documents that may be required for the perpetual enforcement of this Comprehensive Permit against such person or entity. The scope of the ZBA's review of a proposed transfer shall be limited to the review of the transferee's eligibility, qualifications, experience, and capacity, and the ZBA's approval shall not be unreasonably withheld. In any event, such a transfer shall be in accordance with 760 CMR 31.08(5).

K. Landscaping Conditions

K.1 Prior to the issuance of the final occupancy permit for the last building in the Rental Component of the Revised Project, the Applicant shall have fully completed the landscaping improvements and plantings shown on the Final Approved Plans for the Rental Component of the Revised Project.

K.2 Prior to the issuance of the final occupancy permit for the last building in the Condominium Component of the Revised Project, the Applicant shall have fully completed the improvements and plantings shown on the Final Approved Plans for the Condominium Component of the Revised Project.

K.3 In the event seasonal weather considerations delay the completion of the final "top coat" paving, landscaping improvements and/or plantings shown on the Final Approved Plans, the Building Commissioner may issue the final occupancy permit in question under Condition K.1 or K.2; provided that the Applicant shall complete the final paving and landscaping improvements and plantings as soon as seasonal weather conditions permit, and the Applicant shall post sufficient cash surety with the Town Treasurer for the completion of those improvements should the Applicant fail to do so.

K.4 The Applicant shall maintain all landscaped areas of the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.

L. **Drainage Conditions**

L.1 Storm water shall be managed in accordance with the Massachusetts Stormwater Policy Manual dated March, 1997, as amended from time to time, as prepared by the Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management.

L.2 All storm water drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utilities.

L.3 The Applicant shall prepare a plan for and shall maintain and repair the drainage structures and storm water management system on the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance.

M. **Parking and Garages**

M.1 The Revised Project shall provide for on-site parking as shown on the Final Approved Plans, and each Affordable Unit and each comparable Market Rate Unit shall have the same reasonable access to on-site open air parking. Garages on the Final Approved Plans may be rented separately to residents and are not subject to the affordability requirements.

M.2 No on-site parking shall be sold to, rented to, licensed to or otherwise conveyed to persons who are not occupants of a unit located on the project Site.

N. **Outdoor Lighting**

N.1 The Applicant shall comply with Outdoor Lighting site design standards for site plan special permit as set forth under Section 10.4.3.2 of the Acton Zoning Bylaw.

N.2 The Applicant shall obtain the Building Commissioner's approval of an outdoor lighting plan consistent with that section prior to the issuance of

any occupancy permits, such approval not to be unreasonably withheld or delayed.

O.. **Sewage Treatment System and Irrigation Well System**

O.1 The sewage treatment plant serving the 296 rental units and the 64 condominium units in Acton shall be designed and constructed as shown on the Final Approved Plans and as approved by the Department of Environmental Protection.

O.2 Prior to the issuance of an occupancy permit for any residential unit in the Revised Project, the sewage treatment plant shall be fully operational and shall have received an approval for such operation from the Department of Environmental Protection.

O.3 The Applicant shall provide to the Acton Building Commissioner and the Acton Board of Health a copy of the final approval of the sewage treatment plant and associated groundwater discharge permit by the Department of Environmental Protection and the Westford Board of Health.

O.4 Prior to issuance of the first occupancy permit for any residential building in the Acton portion of the Revised Project, the Applicant shall deposit eighteen thousand dollars ($18,000) into a fund to be available to and administered by the Acton Health Department to inspect and monitor the construction of the sewage treatment plant and the connection of the buildings to the collection system, and this shall be the only fee payable to the Board of Health for these purposes. Pending the recording and/or registration of the Common Infrastructure Agreements under Condition F.3 of this Decision, the Applicant shall irrevocably grant to the Town of Acton Board of Health and its employees, agents, and consultants the right to:

a. enter onto the Site in both Acton and Westford,

b. inspect all aspects of the construction of the sewage treatment plant and related facilities in both Acton and Westford,

c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and

d. ensure that the Applicant is fully and effectively performing all of its obligations with respect to the construction of the sewage treatment plant and related facilities in both Acton and Westford.

O.5 Of the 296 rental units in the Rental Component of the Revised Project, no unit shall contain more than two bedrooms; 160 units shall contain two bedrooms; 136 units shall contain one bedroom; all as "bedroom" is

defined by Title V. The CIA shall contain a provision specifying the bedroom count consistent with this provision and prohibiting any unit from containing more than two bedrooms.

O.6 Of the 64 condominium units in the Condominium Component of the Revised Project, each unit shall contain two and only two bedrooms as "bedroom" is defined by Title V, 310 CMR 15.00. The CIA and the Master Deed for the Condominium Component of the Revised Project shall contain a provision specifying the bedroom count consistent with this provision and prohibiting any unit from containing more than two bedrooms.

O.7 The Applicant shall contemporaneously provide to the Acton Board of Health copies of all written communications, reports, submissions, and other documents sent by the Applicant to or received by the Applicant from the Department of Environmental Protection concerning the waste water treatment plant and/or the related groundwater discharge permit (unless the Town was also in receipt of such documentation directly from DEP).

O.8 Without limitation, the Applicant shall contemporaneously provide to the Acton Board of Health any financial reports submitted or required to be submitted to DEP regarding the operation and maintenance of the waste water treatment facility, any financial security which serves as a source of funding for immediate replacement or repair of the treatment plant and/or associated facilities, any capital reserve account for the waste water treatment facility, and any expenditures from and replenishment to that security and that capital reserve account.

O.9 Irrigation wells for the Revised Project are subject to the following conditions:

a. Each irrigation well for the Revised Project shall be a bedrock well;

b. Each irrigation well for the Revised Project shall be metered and an annual report of the well's usage shall be provided to the Acton Board of Health;

c. Each irrigation well located in Acton and associated facilities located in Acton shall at a minimum conform to Acton Board of Health's Regulations 9-2, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1;

d. Each irrigation well located in Westford, the water from which shall be used to irrigate land in Acton, and all facilities

associated therewith, shall at a minimum conform to Acton Board of Health's Regulations 9-2.2 to 9-2.11, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1; and

e. Prior to the installation of any irrigation well and associated facilities for the Revised Project, the Applicant shall submit a detailed plan to the Acton Board of Health showing all irrigation wells, lines, pump stations, and associated facilities so that the Board of Health can verify compliance with these requirements.

P. Use Requirements

P.1 As this Comprehensive Permit Decision grants permission to build the Revised Project on the Site under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit including the right to construct and use the Revised Project in a manner that is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing, no use shall be made of the Site or of any building or unit on the Site erected pursuant to this Comprehensive Permit except for (a) residential use consistent with this Decision, and (b) accessory uses customarily incidental to such residential use in Acton.

P.2 Notwithstanding the Zoning District in which the Site is located, as long as this Comprehensive Permit is in force and effect, no business or commercial use shall occur or be conducted on the Site or in any building or unit on the Site except for (a) necessary unit sales, rental and management activities with respect to the Revised Project and (b) accessory concierge services for residents of the Revised Project including such services as an automatic teller machine, a dry cleaning pick-up and drop off location, one or more express mail pick-up and drop off boxes, a photocopy or fax machine, and similar accessory concierge services for the convenience of the residents of the Revised Project.

P.3 Without limitation, no building, housing unit, or any other portion of the Site shall be used for temporary or transient housing, including but not limited to any type of hotel, motel, casino, or extended stay hotel or motel, any housing or shelter that would be subject to the licensing provisions of General Laws Chapter 140, Sections 1 through 40, as amended from time to time.

Q. Affordability Requirements - Condominium Component

Q.1 Number of Affordable Condominium Units: Twenty-five percent (25%) of the units within the Condominium Component of the Revised Project shall be made available for purchase by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the "Affordable Condominium Units").

Q.2 Sale Prices: The Affordable Condominium Units shall be sold to qualified households at prices deemed affordable to a three-person household earning 70% of the area median income, utilizing cost assumptions developed by the Applicant's Subsidizing Agency or, in the absence of such cost assumptions, utilizing cost assumptions developed under the MassHousing Housing Starts Program. The maximum sale prices for the Affordable Condominium Units shall be reviewed and approved by the Monitoring Agent for the Condominium Component (which shall be the Acton Community Housing Corporation ("ACHC") unless a different entity is required by the Applicant's Subsidizing Agency) (the "Condominium Monitoring Agent"), at the time of lottery for the selection of buyers of the Affordable Condominium Units. Any modification or deviation from the designation of affordable units as designated herein shall be subject to approval by the Condominium Monitoring Agent or the Applicant's Subsidizing Agency.

Q.3 Selection of Buyers for Affordable Condominium Units: The Applicant shall obtain the approval of the Applicant's Subsidizing Agency or the Condominium Monitoring Agent of a Buyer Selection Plan for the sale of the Affordable Condominium Units prior to putting the Affordable Condominium Units on the market. Buyers shall be selected through a fair lottery process (the "Lottery").

To the maximum extent permitted by law, first preference for the purchase of seventy percent (70%) of the Affordable Condominium Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

(a) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4 and would be considered a resident under the United States Census Bureau's residency guidelines.

(b) at least one member of the household is either a parent, son or daughter of an Acton resident.

(c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

(d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

The selection of purchasers for the Affordable Condominium Units, including the Lottery, shall be administered by a consultant retained by the Applicant, subject to the approval of the Applicant's Subsidizing Agency or the Condominium Monitoring Agent. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Applicant's Subsidizing Agency or the Condominium Monitoring Agent. The Condominium Monitoring Agent shall oversee the lottery. In the event the Condominium Monitoring Agent is the ACHC or other board or official of the Town of Acton, the Applicant shall deposit the sum of $2,500 into a municipal account established pursuant to G.L. c. 44, §53G, to cover the Condominium Monitoring Agent's expenses in overseeing the Lottery.

Selected purchasers shall complete a first-time homebuyer course prior to closing on the purchase of an Affordable Condominium Unit. The Applicant shall make available a list of such courses for purchasers to attend.

The Condominium Monitoring Agent may develop rules and guidelines (consistent with the requirements of this Decision and those of the Applicant's Subsidizing Agency) to carry out its responsibilities under the provisions of this section. Income eligibility shall be governed by the rules and regulations of the Applicant's Subsidizing Agency or, in the absence of such rules and regulations, by the rules and regulations of MassHousing under the Housing Starts Program, or in the absence of such rules and regulations, by the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning income qualification and the Acton connection qualification shall be resolved in the first instance by the Condominium Monitoring Agent. A party aggrieved by qualification-related decision of the Condominium Monitoring Agent may appeal the decision to the ZBA for a final determination.

The Local Preference provisions of this section Q.3 are intended to complement and not to override or supersede any applicable income eligibility rules and regulations of the Applicant's Subsidizing Agency, or any other applicable fair marketing regulations of any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

Q.4 Phasing-in of Affordable Condominium Units: The Affordable Condominium Units shall be built and sold contemporaneous with the market-rate units in the Condominium Component of the Revised Project. No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices (the "Market Rate Condominium Units") until at least one certificate of occupancy is issued for an Affordable Condominium Unit. Except for good cause shown, the proportion of Market Rate Condominium Unit certificates of occupancy issued to Affordable Condominium Unit certificates of occupancy issued shall at no time exceed 3:1.

Q.5 Perpetual Affordability Restriction: Prior to the issuance of any building permits for the Revised Project, a Regulatory Agreement for the Condominium Component of the Revised Project shall be executed and recorded in accordance with Condition Q.7 below (the "Condominium Regulatory Agreement"). The Condominium Regulatory Agreement shall provide, among other things, that (a) 25% of the units in the Revised Project will be sold and resold subject to a Deed Rider, substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are necessary to conform to the requirements of this Decision and such further changes as are requested by counsel to the Town of Acton and acceptable to the Applicant's Subsidizing Agency, and (b) the profit of the Owner of the Condominium Component of the Revised Project shall be limited to 20% of the total development cost of the Condominium Component of the Revised Project as defined by the Regulatory Agreement and applicable regulations. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Condominium Unit in the Revised Project at the time of each sale and resale. The purpose of the Deed Rider is to restrict each such Affordable Condominium Unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, §§ 31-33.[6] After obtaining the

6 Pursuant to G.L. c. 184, § 31, an affordable housing restriction means "a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a

ZBA's final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) ("DHCD"), if required pursuant to M.G.L. c. 184, § 32, or other law. The Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

In any event, as the Decision grants permission to build the Revised Project under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit, the Revised Project shall remain subject to the restrictions imposed by the Act so long as the Revised Project exists and is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing. Accordingly, the Decision and the Deed Rider shall restrict each such Affordable Condominium Unit so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized.[7] It is the express intention of the Decision that the

---

restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families" (emphasis added).

7. See *Zoning Board of Appeals of Wellesley V. Ardemore Apartments Limited Partnership*, 436 Mass. 811 (2002) ("[I]t is anomalous to suggest, as the owner does, that the legislation provides a temporal, short-term fix of insufficient affordable housing at the expense of local autonomy. Rather, the Act reflects a legislative intent to provide an incentive to developers to build affordable housing in cities and towns that are deficient in affordable housing, and a developer's commitment to help a city or town achieve its statutory goal is the raison d'etre for the override of inhibiting zoning practices. But if housing developed under a comprehensive permit is 'affordable' only temporarily (fifteen years in this case, according to the owner), a city or town may never achieve the long-term statutory goals: each time an affordable housing project reverts to market rentals, the percentage of low income housing units in a municipality decreases, the percentage of market rate units increases, and access to a new round of comprehensive permits is triggered. We see nothing to suggest that the Legislature had in mind such an endless revolving cycle, or contemplated that over time an ever increasing number of multi-family buildings could be constructed on vacant land in areas zoned for single-family

period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

In the event that the Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial; the Applicant shall (a) submit to the ZBA a proposed alternative form Deed Rider which, when approved by the ZBA and Town Counsel, shall be submitted to DHCD for such approval, and (b) grant to the Town of Acton or its designee in the Deed Rider a right of first refusal, in a form mutually acceptable to counsel for the Applicant and to Town Counsel, covering each Affordable Condominium Unit in the Revised Project which shall be triggered upon the expiration of the affordability period.

Q.6 Profit Cap: To conform to the intent of the Act that profits from the Condominium Component of the Revised Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of development fees (the "Profit Cap"). The Monitoring Services Agreement shall provide that upon the closing of the sale of the last unit conveyed by the Applicant, the Condominium Monitoring Agent at the Applicant's expense shall cause a certified public accountant ("CPA") to review the financial records of the Revised Project to determine whether the Applicant has conformed to this specific Profit Cap requirement in accordance with the applicable regulations promulgated by the Applicant's Subsidizing Agency. The CPA shall submit to the ZBA and the Condominium Monitoring Agent a CPA certification that either the Applicant has conformed to the Profit Cap, or certifying the actual profit from the development. If the Applicant has exceeded the 20% Profit Cap, the Applicant shall donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.

In the absence of specific Profit Cap regulations promulgated by the Applicant's Subsidizing Agency, in determining whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision, the CPA shall be required to certify that (a) the total profit to the Applicant for the Condominium Component of the Revised Project does not exceed twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of

homes, as multi-family housing buildings were first added to and then subtracted from a town's statutory goal."

development fees; (b) the Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Condominium Component of the Revised Project in order to artificially inflate the costs of development of the Condominium Component of the Revised Project; (c) there have been no commissions charged on the Affordable Condominium Units which are required to be sold pursuant to a lottery selection process as provided by the Comprehensive Permit Decision; (d) for costs incurred for the benefit of both the Rental Component and the Condominium Component of the Revised Project, the Applicant has made reasonable cost allocations between the two components of the Revised Project consistent with. generally accepted accounting principles, and (e) the CPA has been provided access by the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Revised Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant. The Applicant shall provide the CPA reasonable access to any financial information reasonably necessary to make these determinations.

All costs of successful enforcement of this Profit Cap condition, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

Q.7 Regulatory Agreement: Prior to applying for a building permit for any portion of the Revised Project, the Applicant shall submit to the Building Commissioner a copy of a fully executed Regulatory Agreement substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are necessary to conform to the Requirements of this Decision and such further changes as are requested by counsel to the Town of Acton and acceptable to the Applicant's Subsidizing Agency, which Regulatory Agreement shall be recorded and/or filed for registration (as applicable) by the Applicant with the Master Deed for the Condominium Component of the Revised Project, governing the protection and administration of the Affordable Condominium Units covered by this Decision.

Q.8 Monitoring Services Agreement: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement with the Condominium Monitoring Agent, in a form

substantially the same as the form used by the Applicant's Subsidizing Agency or, in the absence of such a form, by the MassHousing under the Housing Starts program, and approved by Town Counsel and counsel for the Applicant and the Applicant's Subsidizing Agency. The Applicant shall pay the reasonable monitoring services fee to the Condominium Monitoring Agent, which shall be deposited in an account established for this purpose.

Q.9 Style and Distribution of Affordable Condominium Units: All Affordable Condominium Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Condominium Component of the Revised Project. To satisfy the requirement that the Affordable Condominium Units shall be evenly distributed throughout the Condominium Component of the Revised Project, the Affordable Condominium Units shall be those units designated as units 2, 4, 27, 30, 33, 35, 39, 41, 43, 46, 49, 52, 55, 57, 59, and 64, on the Unit Distribution Plan Sheet (Hearing Exhibit 181. In addition, all Affordable Condominium Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, and other amenities all as more fully shown in the Final Approved Plans.

R. Affordability Requirements - Rental Component

R.1 Number of Affordable Rental Units: At the option of the Applicant, either (i) twenty percent (20%) of the units within the Rental Component of the Revised Project in Acton are to be restricted for occupancy by persons or households whose aggregate family income does not exceed 50% of the median gross income for the area, or (ii) twenty-five percent (25%) of the units within the Rental Component of the Revised Project in Acton are to be restricted for occupancy by persons or households whose aggregate family income does not exceed 80% of the median gross income for the area, as established by the United States Department of Housing and Urban Development, all in accordance with the applicable rules, regulations and guidelines of the Applicant's Subsidizing Agency.

R.2 Affordable Rental Prices: Subject to the specific income percent requirements of the Applicant's Subsidizing Agency, the Affordable Rental Units shall be rented to households whose aggregate adjusted family income conforms to the applicable requirements of Condition R.1 above.

R.3 Perpetual Affordability Restriction: As the Decision grants permission to build the Rental Component of the Revised Project under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit, the

Rental Component of the Revised Project shall remain subject to the restrictions imposed by the Act and the Affordable Rental Units shall remain affordable so long as the Revised Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing. Accordingly, the Affordability Requirements of this Decision shall restrict the Rental Component of the Revised Project so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized in perpetuity. Without limitation, so long as the Revised Project does not comply with the provisions of the Town of Acton's zoning requirements as aforesaid, in no event shall the period of affordability be less than ninety-nine years or the longest period allowed by law.

To ensure the survival of this affordability restriction, this Comprehensive Permit Decision shall be recorded ahead of any mortgage or other instrument capable of being foreclosed upon, such that its provisions, including without limitation the within Affordability Requirements, shall survive any foreclosure on all or any portion of the property comprising the rental component of the Revised Project. In the alternative, to satisfy this condition, the Applicant may provide for recording a duly executed Subordination, Nondisturbance and Attornment Agreement which provides equivalent protection and which is in a form satisfactory to Town Counsel.

R.4 Regulatory Agreement: Prior to applying for a building permit for the Rental Component of the Revised Project, the Applicant shall submit to the Building Commissioner a copy of a fully executed Regulatory Agreement substantially in the form required by the Applicant's Subsidizing Agency, and containing such changes as are requested by counsel for the Town of Acton and acceptable to the Applicant's Subsidizing Agency, which Regulatory Agreement shall be recorded and/or filed for registration (as applicable) by the Applicant with the applicable Registry(ies) of Deeds, governing the protection and administration of the Affordable Rental Units covered by this Decision which shall include, without limitation, the following types of provisions:

a. Rental Monitoring Agent: Provisions acceptable to the Applicant's Subsidizing Agency to designate (and to replace if necessary) a suitable entity or entities acceptable to the Applicant's Subsidizing Agency to monitor (i) the administration of the Affordable Rental Units in the Revised Project, (ii) compliance with the Act's limited dividend requirements, and (iii) compliance

with the Applicant's Subsidizing Agency's affordability requirements.

b. Local Preference: To the maximum extent permitted by law and by the requirements of the Applicant's Subsidizing Agency, a provision that first preference for the rental of seventy percent (70%) of the Affordable Rental Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

(i) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4, and would be considered a resident under the United States Census Bureau's residency guidelines;

(ii) at least one member of the household is either a parent, son or daughter of an Acton resident;

(iii) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline; or

(iv) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline.

The Town shall develop rules and guidelines to carry out the Local Preference provisions of this section, as necessary, including a provision that disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Applicant's Subsidizing Agency. A party aggrieved by qualification-related decision of the Applicant's Subsidizing Agency may appeal the decision to the ZBA for a final determination.

The Local Preference provisions of this section R.3.e are intended to complement and not to override or supersede any applicable income eligibility rules and regulations of the Applicant's

Subsidizing Agency, or any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, the Applicant's Subsidizing Agency, MassDevelopment, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

c. Phasing-in of Affordable Rental Units: Consistent with the requirements of the Applicant's Subsidizing Agency, a provision that Affordable Rental Units shall be constructed and rented contemporaneously with the market-rate units in the Rental Component of the Revised Project.

d. Recording Requirement: The Regulatory Agreement shall be recorded and registered in the applicable Registry(ies) of Deeds and shall encumber the Rental Component of the Revised Project throughout its Term.

R.5 Monitoring: The Rental Monitoring Agent designated by the Applicant's Subsidizing Agency shall be responsible for monitoring and certifying: (a) compliance with the Applicant's Subsidizing Agency's equity and limited dividend policy (or, in the absence thereof, MassDevelopment's equity and limited dividend policy), and (b) compliance with the applicable affordability requirements for the Affordable Rental Units. If the Applicant has exceeded the allowable profit under the applicable equity and limited dividend policy, the Applicant shall donate the excess profit to the Town of Acton pursuant to G.L. c. 44, § 53A, to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.

R.6 All costs of compliance with and successful enforcement by the ZBA and/or the Town of Acton of the limited dividend and affordability requirements, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

R.7. Continuity of Regulatory Agreement: It is the intention of this Decision that the Rental Component of the Revised Project shall, in perpetuity and without interruption, be subject to a suitable Regulatory Agreement consistent with this Decision governing the Affordable Rental Units. Accordingly, at least one year prior to the expiration of the then current Regulatory Agreement, the then Owner of the Rental Component of the Revised Project shall commence and diligently pursue to conclusion negotiations with a qualifying Subsidizing Agency (or in the absence of such, with the Town) for a new Regulatory Agreement consistent with this Decision to commence immediately upon the termination of the then

current agreement. In the absence of a fully executed and recorded Regulatory Agreement at least ninety (90) days prior to the expiration of the then current agreement, the ZBA shall after a duly noticed public hearing promulgate such additional conditions and restrictions as are necessary to ensure that the Affordable Rental Units remain properly managed, administered, and affordable in accordance with this Decision. All reasonable legal fees incurred by the ZBA and/or the Town of Acton to effectuate Condition R.7 shall be borne by the Applicant

R.8 Style and Distribution of Affordable Rental Units: All Affordable Rental Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Rental Component of the Revised Project. During the initial phase of renting units in the Revised Project, the Applicant shall use reasonable efforts to ensure that Affordable Rental Units shall be distributed throughout the Rental Component of the Revised Project in accordance with the requirements of the Applicant's Subsidizing Agency such that no rental building has less than 14% nor more than 36% of Affordable Rental Units at any given time. As rental units and market-rate units become vacant, the Applicant shall use reasonable efforts to ensure that the units will be re-occupied in a manner that trends toward 20% or 25% as the case may be (under Condition R.1 hereof) of the one- and two-bedroom units in each building in the Rental Component of the Project being occupied by income-eligible households. In addition, all Affordable Rental Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, and other amenities all as more fully shown in the Final Approved Plans.

S. Material Changes

S.1 If, between the date the Decision is filed in the office of the Acton Town Clerk and the completion of the Revised Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Revised Project as reflected in and approved by the Decision, such changes shall be governed by 760 CMR 31.03(3). Without limitation, in the event any subsequent permitting process (such as the environmental review of the Revised Project by the Secretary of Environmental Affairs, the state wetlands review of the Revised Project by the Conservation Commission or DEP, the groundwater discharge permit review of the Revised Project by DEP, or other state or federal governmental approvals) results in a change to the Final Approved Plans which triggers the need for further waivers from local bylaws, rules or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 31.03(3) shall be followed.

S.2 Except with respect to an application to the Acton Planning Board for a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a 64 unit Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the Condominium Component), in no case shall the Applicant be allowed to implement a Project change that increases the number of units, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, without submitting a new application and undergoing a new public hearing and decision process.

S.3 In the event the Acton Planning Board issues a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the "Special Permit"), and in the event that portion of the Property in Acton designated as Lot 4 is developed in accordance with the Planning Board Special Permit, then (a) the provisions of the Special Permit shall govern the development and use of Lot 4 and shall supersede the provisions of this Comprehensive Permit as to the Condominium Component of the Revised Project, (b) all conditions of this Decision applicable to the Rental Component of the Revised Project shall remain in full force and effect, and (c) signage for the Revised Project shall be as approved by this Decision. To avoid uncertainty as to whether the provisions of this Comprehensive Permit or the Special Permit apply to the development of Lot 4, the Applicant shall, by virtue of recording the Special Permit at the Middlesex South District Registry of Deeds and filing the Special Permit with the Middlesex South District Land Court Registration Office, as applicable, be deemed to have waived the right to develop Lot 4 under this Comprehensive Permit and shall be bound by the requirements of the Special Permit with respect to the development of Lot 4.

T. Expiration Date

If construction authorized by a comprehensive permit has not begun within three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The ZBA may grant an extension of the three year lapse date for good cause shown, which shall include for example delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party

appeal of a governmental permit or approval required for the Revised Project.

U. **Notice to Abutters**

At least seven days prior to the start of construction, the Applicant shall provide written notice to the ZBA and to Nagog Woods Association of the anticipated construction start date and the anticipated construction schedule.

V. **Highridge Way**

Upon being recorded with the Registry of Deeds and filed in the Land Registration Office, as applicable, this Comprehensive Permit shall supersede and rescind the prior decision of the Acton Planning Board approving Highridge Way as shown on a plan entitled: "Highridge Definitive Subdivision Plan, in the Town of Acton, Middlesex County, Commonwealth of Massachusetts" dated August 21, 1989, revised September 11, 1989 and September 26, 1989, by Howe Surveying Associates, Inc., recorded in Book 20595, Page 356 and the Restrictive Covenant dated May 4, 1990 recorded in Book 20595, Page 366 associated therewith.

W. **Dispute Resolution**

W.1 The evolution of the Revised Project and the provisions of this special permit represent a collaborative effort by the Applicant and the Town of Acton to expedite the construction of a substantial development of new rental and condominium affordable housing in the Town of Acton. Consistent with this intent, the ZBA encourages all interested parties to use their respective best efforts, through voluntary, timely, expedited dispute resolution, to resolve any material disputes that may arise as a result of this Comprehensive Permit, prior to litigation, time deadlines permitting.

X. **Signs**

The ZBA approves the four permanent signs identified in Exhibit G hereto. Any temporary signs (advertising units for sale or rent) and any directional signs for the Revised Project shall conform to the sign requirements of the Acton Zoning Bylaw unless the ZBA grants a minor modification to this Decision to allow additional temporary or directional signs requiring a waiver therefrom. All temporary signs shall be forthwith removed when the unit or units which they advertise have initially been sold or rented. In no case shall a temporary sign remain for longer than 6 months without advance permission of the ZBA.

Z. Self-Correcting Provision

In the event a typographical error renders this Decision and the Final Approved Plans inconsistent as to the number of units, number of bedrooms, or similar objective characteristic of the Revised Project, the provisions of the Final Approved Plans shall control on the point of inconsistency. Otherwise, this Decision shall be given full force and effect on its terms, unless amended by the ZBA in writing.

AA. Planned Production Plan

In accordance with 760 CMR 31.07(1)(i)(6), it is the intention of the ZBA that the Affordable Units approved by this Decision will be credited toward the Town of Acton's planned production of low and moderate income housing inventory when this Comprehensive Permit Decision becomes final in accordance with 760 CMR 31.04(1)(a). In order for the units authorized under the comprehensive permit to continue to be credited toward the Town of Acton's low and moderate income housing for the duration of the use restriction, nothing in this Decision shall prevent the issuance by the Building Commissioner of conditional building permits pursuant to 780 CMR 111.13, conditioned by the Building Commissioner upon conformance with the requirements of this Decision, the provisions of the State Building Code, and other applicable state and federal governmental requirements.

XI. CONCLUSION

The Application for a comprehensive permit for the Revised Project as shown on the Final Approved Plans is granted for the reasons stated above, subject to the conditions provided herein. The Board disposes of the Applicant's requests for specific relief from local bylaws, rules and regulations in accordance with this Decision and its conditions and as summarized in Exhibits A-E attached hereto, which are incorporated herein by reference and made a part hereof. Exhibits F and G attached hereto are incorporated herein by reference for the purposes stated in this Decision.

[Intentionally Left Blank]

This concludes the Decision of the Board.

ACTON BOARD OF APPEALS

Chairman Jonathan Wagner

Member Kenneth Kozik

Member David Black

CERTIFICATION

I, Eva Bowen, Town Clerk of the Town of Acton, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals which was filed in the office of the Town Clerk on Dec 20, 2005 and no appeal has been filed with the Town Clerk.

Eva Bowen
Town Clerk
Acton, Massachusetts

LIST OF EXHIBITS

Exhibit A	Waivers from Acton Board of Appeals 40B Regulations
Exhibit B	Waivers from Acton Zoning Bylaw
Exhibit C	Waivers from Acton Wetlands Bylaw
Exhibit D	Waivers from Acton Board of Health Regulations
Exhibit E	Waivers from Acton Subdivision Regulations
Exhibit F	Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton
Exhibit G	Sign Requirements

EXHIBIT A

WAIVERS FROM ACTON ZBA 40B REGULATIONS

The ZBA grants the following waivers from the following provisions of the Acton Board of Appeals 40B Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

1. **Waivers as to Timing of Compliance:**

The following waivers relate to the timing of compliance only. The Applicant shall achieve substantial compliance with the substance of the regulation, to the reasonable satisfaction of the Building Commissioner, prior to the issuance of a building permit for any portion of the Revised Project in Acton, except as otherwise specified:

- § 3.10 Earth Removal Calculations
- 3.12.2 Completed Designer's Certificate (The Certificate will be provided prior to recording of the subdivision);
- § 3.14.3 A recordable Plan Sheet suitable for recording;
- § 3.14.4.5 The perimeters of all proposed improvements;
- § 3.14.5.16 Access and utility easements;
- § 3.14.5.18 Proposed boundaries of each development phase;
- § 3.14.5.19 Location and type of stormwater drainage facilities, including notes on the construction;
- § 3.14.5.23 Location and type of other underground utilities;
- § 3.14.6.7 Detailed utility design, including rims, inverts, pipe slopes and sizing;
- § 3.14.7.4 Outdoor lighting details;
- § 3.14.8.7 Outdoor lighting installations;
- § 3.14.8.8 Proposed boundaries of each development phase.

2. **Waivers as to Substance:**

The ZBA grants the following substantive waivers from the Acton ZBA 40B Regulations:

- § 3.11 Water Balance Calculations. The design of the system will comply with DEP Stormwater Quality Standards.

- § 3.14.3.7 Location of affordable housing lots and units. No waiver is granted as to the Townhouses Condominium Units. (The Applicant has submitted and the ZBA has approved an affordable unit locator plan to the ZBA for the Condominium Component Portion of the Revised Project.) As to the Rental Component of the Revised Project, the ZBA grants a waiver, subject to conditions in Comprehensive Permit, for the Revised Project as shown on the Final Approved Plans. The Applicant shall use reasonable efforts to ensure that Affordable Rental Units are evenly distributed throughout the Rental Component of the Revised Project.

- § 3.14.10 Architectural Floor and Elevations Plan Sheet. A waiver is granted allowing certain plans to be submitted at a scale of 1/8 = 1'.

- § 3.16 Affordable Housing Units. A waiver is granted from this Section as these items are addressed by conditions in the Decision and/or will be included in the required Regulatory Agreement(s).

EXHIBIT B

WAIVERS FROM ACTON ZONING BYLAW

The ZBA grants the following waivers from the Acton Zoning Bylaw, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction and use of the Revised Project as shown on the Final Approved Plans:

- § 3.1 (Provisions for Table of Principal Uses and Principal Use Definitions) and § 3.2 (General Uses) to allow the multifamily dwelling use in the Office Park (OP-1 and OP-2) Districts and the Residence 10/8 District as shown on the Final Approved Plans.

- § 3.3 (Residential Uses) to allow more than one building per lot as shown on the Final Approved Plans.

- § 3.8.1.1 (Accessory use of private garage or carport for more than four motor vehicles) to allow an accessory use of a private garage or carport for more than four motor vehicles as shown on the Final Approved Plans.

- § 4.3.6.2 (Watershed Recharge) to allow storm water to be handled in compliance with the requirements of the DEP's Stormwater Management/Quality Policies.

- § 4.3.6.3 (Treatment and Renovation of Runoff) with respect to a portion of Lot 4 at the toe of the hill where the abutting land is being designated for conservation, to allow storm water to be handled in compliance with the requirements of DEP's Stormwater Management/Quality Policies.

- § 5.1 (Table of Standard Dimensional Regulations) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding the Bylaw's provisions requiring a minimum of fifty (50%) percent Open Space; a maximum floor area ratio of 0.2; setbacks of forty-five feet (45') for the front yard, thirty feet (30') for the side and rear yards; a sixty foot (60') offset abutting a residential district in the Office Park 1 (OP-1) zoning district; the maximum building height of thirty-six feet (36').

- § 5.3.1 (Location of Structures) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding the location of certain structures in the required yard offset areas.

- § 5.3.5.1 and § 5.3.5.2 (Height requirements) to allow construction of the Revised Project as shown on the Final Approved Plans notwithstanding appurtenant structures being located upon the roof of a building extending to a maximum height of up to forty-five feet (45') when combined with the height of the building.

- § 6.2 (General Provisions) to allow parking for buildings to be located on lots other than those occupied by the building which the parking serves.

- § 6.3.1.1 (Parking per Dwelling Unit) to allow fewer than two (2) spaces for each dwelling unit as the overall project provides approximately 1.9 spaces per unit.

- § 6.7.1 (Parking Cells) to allow parking lot cells separated by a distance of less than thirty (30') feet as shown on the Final Approved Plans.

- § 6.7.2 (Set-Backs) to allow a parking lot less than thirty (30') feet from the front lot line as shown on the Final Approved Plans.

- § 6.7.3 (Access Driveways) to allow two access driveways into the site and to allow a looped driveway from the "y" configuration at the cul-de-sac location.

- § 6.7.6 & 6.7.7 (Perimeter Landscaping & Interior Area Landscaping Requirements) to allow landscaping as shown on the Final Approved Plans that may not meet all specific Bylaw requirements, (i.e. a landscaped perimeter screen with a minimum ten (10') foot width, interior landscaped island areas so that every parking space is not more than forty-five (45') feet from a landscaped island.).

- § 6.7.8 (Plantings for Perimeter and Interior Area Landscaping Requirements)to allow landscaping as shown on the Final Approved Plans that may adhere to all specific requirements listed under this section, sub sections 6.7.8.1 to 6.7.8.8, inclusive.

- § 7.4.5.1, § 7.5.10, § 7.8.1, § 7.9 (Signs) to allow three (3) signs as shown on Sheet L6 and a fourth sign as shown on Sheet L4 of the Final Approved Plans.

EXHIBIT C

WAIVERS FROM LOCAL WETLAND BYLAW, RULES AND REGULATIONS

The ZBA grants the following waivers from the Acton Wetlands Bylaw, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

- A waiver from § F.2 of the Wetlands Bylaw which provides, "No person shall remove, dredge, fill or alter any resource area except as provided in Section 4, without first filing a Determination of Applicability, or a written Notice of Intent under this Bylaw, and obtaining and complying with the terms of said Determination or with an Order of Conditions."

- A waiver from the required set-backs as follows (a) the 50 foot setback of undisturbed vegetation; (b) the 75 foot no-build setback to edges of driveways, and (c) the 50 foot chemical free area, all as necessary to construct the Revised Project shown on the Final Approved Plans.

EXHIBIT D

WAIVERS FROM LOCAL BOARD OF HEALTH RULES AND REGULATIONS

The ZBA grants the following waivers from the following provisions of the Acton Board of Health Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, to allow the construction of the Revised Project as shown on the Final Approved Plans:

- With respect to the proposed Irrigation Well(s) serving the Revised Project, the ZBA grants waivers from Board of Health Regulations §§ 9.6.4[4] and 9.6.5[5], and § 9-7 (to the extent a Board of Health variance would otherwise be required with respect thereto), subject to the conditions applicable to Irrigation Wells.

- With respect to the "Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas," the ZBA grants a waiver from Article 11 of the Board of Health Regulations, subject to the conditions set forth in the Conditions section of the Decision including without limitation the conditions covering Common Infrastructure Agreements and the Sewage Treatment System.

- With respect to the requirements of § 16-4 of the local Board of Health Regulations applicable to the issuance of a permit for the Sewage Treatment System, the ZBA grants a waiver from § 16-4 of the Board of Health Regulations, subject to the conditions set forth in the Conditions section of the Decision. The ZBA does not grant a waiver, express or implied, from the provisions of the Board of Health Regulations requiring permits for the connection of the buildings in the revised project to the sewer collection system.

---

[4] Section 9.6.4 provides in relevant part. "Private or semi-public well water systems or other sources of potable water shall not be approved where a public water line is accessible in an abutting way and where permission to tie in such water line can be obtained from the authority having jurisdiction over it.

[5] Section 9.6.5 provides. " A well must be located on the lot it serves. Service of more than one lot is prohibited."

EXHIBIT E

WAIVERS FROM ACTON SUBDIVISION REGULATIONS

The ZBA grants the following waivers from the following provisions of the Acton Subdivision Regulations, subject to the terms and conditions set forth in the accompanying Comprehensive Permit Decision, and subject to any applicable requirements of the Acton Engineering Department as set forth in the Inter-Departmental Communication to the ZBA dated December 7, 2005 (the "IDC") (see Hearing Exhibit 186 and Condition A.2 above), to allow the construction of the Revised Project as shown on the Final Approved Plans. Where designated by an asterisk, the Applicant shall achieve compliance to the reasonable satisfaction of the Building Commissioner prior to the issuance of a building permit for any portion of the Revised Project in Acton:

Reg. Cite	Reg. Subject Matter	ZBA Action
4.0	Procedure for the Submission of Conceptual and Preliminary Subdivision Plan	√ = ZBA grants a waiver, subject to the conditions in the Comprehensive Permit, for the Revised Project as shown on the Final Approved Plans.
5.0	Definitive Plan	√, subject to Engineering Department IDC.
6.1 - 6.4	Performance Guarantees	√, subject to Conditions for performance guarantees in the Comprehensive Permit.
8.1.9.1	Intersections with four or more legs are not permitted	√, provided the Recycling Area shown on Sheet L-3 is reconfigured to match that shown on the Master Plan. (This waiver relates to the "four leg" intersection at the junction of the "Y" intersection for the access to the development and a separate 90° intersection of the alternate access drive to the Westford Apartment component of the 40B project.)
8.1.13 & 8.1.14	Superelevation of curves, sight distances & Grades of Streets	√, subject to Engineering Department IDC. (This waiver relates to the Exception to Table II "Vertical Design Standards" to allow vertical roadway design and site distances for a 25 mph speed limit.)
8.1.17	Residential SINGLE ACCESS STREETS and other DEAD-END STREETS, whether temporary or permanent, shall not be longer than 500 feet.	√ (This waiver allows the single access project drive longer than 500'.)
8.1.18.1	A CUL-DE-SAC STREET turnaround shall be designed in one of the two following ways.	√ (This waiver allows the construction of the proposed one-way counter-clockwise loop road as shown on the Final Approved Plans beginning at the condo project (Lot 4).)
8.1.25	ROADS or roadways in a SUBDIVISION shall not provide access to land in any other town unless there is also adequate access over STREETS in the	√ (This waiver allows a driveway from the cul-de-sac in Acton to the rear of the apartment buildings in Westford, as shown on the Final Approved Plans, for emergency access and maintenance purposes for the benefit of the three

Reg. Cite	Reg. Subject Matter	ZBA Action
	adjoining town.	buildings located in Westford.)
* 8.2.2.1	The design shall include the size, quality, and type of pipe…	A waiver is granted as to the timing of compliance only: the Applicant will comply with this requirement prior to the issuance of a building permit.
* 8.2.2.4	The rational formula (as described in Seelye's Design Data Book for Civil Engineers), based on a10-year expectancy…	√, subject to Engineering Department IDC. (The Applicant will comply prior to the issuance of a building permit.)
*8.2.4 & 8.3.5	STREET drainage shall not be channeled into a wetland or water body with first going into a vegetated detention basin & Velocity Check Dams	√, subject to Engineering Department IDC. (The Applicant will comply prior to the issuance of a building permit. Substantively, this waiver is limited to the Westford Lane street drainage improvements' discharge to a wetland.)
8.5.4	Zones 1 - 4 of the Groundwater Protection District - hydrologic budget or water balance calculation	√, provided that, prior to issuance of construction documents and as part of its Notice of Intent to the Acton Conservation Commission, the Applicant will include a water balance calculation demonstrating compliance with the requirements of the DEP Storm Water Management Policies for recharge of runoff due to development.
8.7.6	A 10-foot wide "Utility, Construction and Slope Easement" shall be provided along each side of the STREET…	√
8.8	Open Spaces	√, provided that the Applicant shall provide the open space and recreational amenities as represented by the Applicant during the public hearing (including without limitation a community garden area, tot lots, pool, indoor basketball area, benches, etc.), as shown on the Final Approved Plans, and/or as described in Hearing Exhibit 94.
9.1.1	The construction of ALL STREETS and WAYS shall comply with the applicable standard cross-section, illustrated in the Design and Construction Standards, Town of Acton.	√, for sidewalks only, subject to Engineering Department IDC.
9.2.4	Open drainage trenches may be used 100 feet or more from the traveled STREETS or WAY only in cases of extreme hardship owing to conditions especially affecting the parcel and…	√, subject to Engineering Department IDC and compliance with the requirements of the DEP Storm Water Management Policies.
9.3.1	Monuments shall be installed at	√, subject to Engineering Department IDC

Reg. Cite	Reg. Subject Matter	ZBA Action
	all STREET intersections...	
9.4	Driveways	√
9.5.2	Sloped granite curbs, type SA as defined in section M9.04.2 of the Mass. Standard Specifications for Highways and Bridges shall be required...	√, subject to Engineering Department IDC and to the admonition that the Board considers sloped granite curbs are preferable from a maintenance and longevity standpoint.
9.6.2	A sidewalk shall be required along that portion of any existing public STREETS upon which the SUBDIVISION has frontage.	√ (This waiver allows sidewalks to be constructed on one side of the access drives.)
9.6.3	In general, sidewalks shall be constructed within the STREET layout at a line that is ...	√
9.6.4	A green strip shall be provided between the edge of the pavement and the sidewalk.	√
9.6.7	Bicycle PATHS shall be constructed to a minimum width of ten feet.	√
9.8.1	Deciduous shade STREET trees shall be planted on LOTS approximately 10 feet from the STREET sideline where trees are lacking.	√ (The Applicant shall consult with the Tree Warden as to the final size, number, placement and type of trees.)
11.2	Earth Removal	√ (The plans and accompanying construction information depict the removal of earth that is proposed as part of the development of the roadway and overall site development. The Erosion and Sedimentation Control Plan addresses the means to prevent erosion from affecting sensitive or offsite areas.)
11.8	Enforcement	√ (The Comprehensive Permit governs development of the Revised Project and is enforceable by Zoning Board of Appeals.)

EXHIBIT F

Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton

C

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is made this ____ day of March, 2005 by, between and among **Woodlands at Laurel Hill, LLC,** a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, on behalf of itself its successors, assigns and nominees ("Woodlands"); and the **Town of Acton** ("Town"), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 ("Board of Selectmen").

WHEREAS, on or about October 7, 2004, Woodlands filed applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals ("Acton ZBA") and the Westford Zoning Board of Appeals ("Westford ZBA") for a total of 352 residential rental units (296 in Acton and 56 in Westford, hereinafter referred to as the "Project"), on approximately 46 acres of land located off of Durkee Lane and Nagog Park in Acton and Westford hereinafter referred to as the "Property";

WHEREAS the Acton ZBA opened a public hearing on the Acton portion of the Project on November 4, 2004, and the Westford ZBA opened a public hearing on the Westford portion of the Project on November 17, 2004.

WHEREAS after the initial public hearing, the Acton Board of Selectmen and Woodlands have negotiated in an effort to arrive at a consensus as to the scale of the project and certain payments from the project to be used for police, fire and emergency public safety infrastructure improvements for North Acton.

WHEREAS as a result of those negotiations, the Acton Board of Selectmen and Woodlands have agreed to recommend to the Acton Board of Appeals, the Acton Conservation

Commission, and the Acton Planning Board approval of a revised project consisting, in Acton, of 296 residential rental units and 64 "for sale" townhouse units, conditioned on the terms set forth herein.

WHEREAS, the Westford ZBA has requested that the Project be revised so as to increase the number of units in Westford to 84 (the revisions as aforesaid to the Project in both Acton and Westford hereinafter referred to as "Revised Project").

WHEREAS, Woodlands intends to file amended applications for comprehensive permits under M.G.L. c. 40B, §§20-23, with the Acton ZBA and the Westford ZBA for the Revised Project.

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Board of Selectmen is willing to support approval of the Revised Project.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged Woodlands and the Board of Selectmen agree as follows:

1. <u>Amended ZBA Applications for Revised Project</u>

On or before March 8, 2005, Woodlands shall deliver to the Acton ZBA a request to amend its pending application for a comprehensive permit to change the Project to the Revised Project; provided, however, that said amendment shall not in any way be construed as a waiver or withdrawal of the original application for comprehensive permit filed with the Acton ZBA. Woodlands shall submit to the Acton ZBA (a) sufficient information on the Revised Project to conform to the jurisdictional application requirements for the comprehensive permit, (b) an identification of all necessary waivers from the Acton ZBA for the Revised Project, and (c) any

additional application fees required for additional units in the Revised Project compared to the original Project.

2. **Proposed Conditions for Comprehensive Permit for Revised Project**

Woodlands and the Board of Selectmen agree to request expedited approval by the Acton ZBA for a comprehensive permit for the Revised Project. They further agree to recommend that conditions be included in the comprehensive permit for the Revised Project to be issued by the Acton ZBA to be in accordance with this Agreement when (and if) the Revised Project is approved by the Acton ZBA ("Proposed Conditions"). Before the close of the Acton ZBA's public hearing, Woodlands and the Board of Selectmen will use their best efforts to agree on a set of Proposed Conditions which they shall submit to the Acton ZBA Woodlands and the Board of Selectmen understand and agree that, based on input at the public hearing on the Revised Project and based on the Acton ZBA's own independent view of the Revised Project, the Revised Project may or may not be approved by the ZBA and the Proposed Conditions may be adopted, amended or rejected by the Acton ZBA.

3. **Special Permit for Senior Residence Development**

In the event that the Acton ZBA issues on or before August 15, 2005, a comprehensive permit for the Revised Project, including the construction of townhouse condominium units on that portion of the Property in Acton designated as Lot 4, Woodlands shall forthwith apply to the Acton Planning Board for a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4. The Board of Selectmen agrees to support the expedited approval with conditions by the Acton Planning Board of a special permit for the Senior Residence

development in lieu of the approved 40B development on that portion of the Property in Acton designated as Lot 4. Woodlands and the Board of Selectmen understand and agree that, based on input at the public hearing on the Senior Residence development and based on the Acton Planning Board's own view of the Senior Residence development, the Planning Board may or may not approve the requested Special Permit.

4. **Payments to The Town of Acton**

Woodlands agrees that it shall pay to the Town of Acton in accordance with G.L. c. 44, §53A, the following amounts within the following time frames:

(a) Approval of Chapter 40B Townhouse Condominium Units

In the event that the Acton ZBA issues on or before August 15, 2005, a comprehensive permit for the Revised Project, including the construction of townhouse condominium units on that portion of the Property in Acton designated as Lot 4, Woodlands shall pay to the Town of Acton the sum of five hundred thousand dollars ($500,000) by certified, cashier's, treasurer's or bank check, or wire transfer, prior to issuance of any building permit for the Revised Project in Acton; and the additional sum of ten thousand five hundred dollars ($10,500) per unit upon the closing of the first sale of each market rate condominium unit constructed and sold pursuant to the comprehensive permit on that portion of the Property in Acton designated as Lot 4, payable by certified, cashier's, treasurer's or bank check, or wire transfer; said obligation to pay shall constitute a separate lien of $10,500 each on each market rate unit and said lien shall be released by the Town's Treasurer for a given market rate unit upon payment to the Town of the $10,500 amount for that unit. (By way of illustration, if there are 48 market rate condominium units and 16 affordable condominium units approved on that portion of the Property, the Town shall be

paid a total of $10,500 times 48 payable in equal $10,500 installments as each unit's first sale closes.)

(b) Approval by Acton Planning Board of a Special Permit for Senior Residence Development

In the event that the Acton ZBA issues on or before August 15, 2005, a comprehensive permit for the Revised Project including the construction of townhouse condominium units on that portion of the Property in Acton designated as Lot 4, and in the event Woodlands or its successor, assign, designee, nominee or affiliate applies for and obtains on or before January 15, 2006, a special permit from the Acton Planning Board for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4, Woodlands shall pay to the Town of Acton the sum of five hundred thousand dollars ($500,000) by certified, cashier's, treasurer's or bank check, or wire transfer, prior to issuance of any building permit for the Revised Project in Acton,[1] and the additional sum of twenty-four thousand two hundred twenty-eight dollars ($24,228) per unit for each market rate Senior Residence unit constructed and sold pursuant to the special permit payable upon the closing of the first sale of each such market rate Senior Residence unit on that portion of the Property in Acton designated as Lot 4, payable by certified, cashier's, treasurer's or bank check, or wire transfer; said obligation to pay shall constitute a separate lien of $24,228 each on each market rate unit and said lien shall be released by the Town's Treasurer for a given market rate unit upon payment to the Town of the $24,228 amount for that unit. (By way of illustration, if there are 57 market rate Senior Residence units and 7 affordable Senior Residence units

---

[1] If the sum of $500,000 has previously been paid by Woodlands to the Town in accordance with paragraph 4(a) hereof, that payment shall be deemed to satisfy Woodland's obligation to pay $500,000 under the first bullet of paragraph 4(b), it being understood and agreed that the $500,000 payment shall occur only once.

approved on that portion of the Property, the Town shall be paid a total of $24,228 times 57 in equal $24,228 installments as each unit's first sale closes.)

(c) Separate Account

In accordance with G.L. c. 44, § 53A, all such payments made pursuant to this paragraph 4 shall be deposited with the Town treasurer and held as a separate account and may be expended by the Board of Selectmen, without further appropriation, toward police, fire and emergency public safety infrastructure improvements for North Acton. Interest on all such funds shall remain with and shall become a part of the same account and may be expended by the Board of Selectmen, without further appropriation, for the same purposes.

(d) Enforcement

In the event that Woodlands or the Town defaults on any obligation under this Agreement, the other party hereto shall have the right to enforce such obligations in an action brought in a court of competent jurisdiction.

5. Construction of the Revised Project

Woodlands, in its absolute and sole discretion, may decide not to proceed with any portion of the Revised Project. However, if Woodlands or its successors, assigns and/or nominees proceeds with the construction of the rental portion of the Revised Project, it shall also construct, complete, and market "for sale" the townhouse units on Lot 4 (including the Senior Residence development if approved). If Woodlands constructs the Revised Project it shall phase construction in such a way as is reasonably practical that the "for sale" units in Acton are constructed before or at the same time as the rental units in Acton, it being the intent of the parties that the "for sale" units shall be completed and offered for sale as soon as reasonably possible in the construction sequence

6. <u>No Appeals</u>

(a) If the Acton ZBA issues a comprehensive permit for the Revised Project on or before August 15, 2005, which includes the Proposed Conditions and such other conditions that in Woodland's absolute and sole discretion are acceptable (i) Woodlands shall not appeal the comprehensive permit, and (ii) the Board of Selectmen shall not permit any town board or official to appeal the comprehensive permit or any other decision made by any other governmental permitting authority approving the development of the Revised Project. In exercising its discretion under this paragraph, Woodlands agrees not to appeal a comprehensive permit for the Revised Project if such other conditions would not delay, alter the design of, or increase the cost of construction or operation of the Revised Project.

(b) If the Planning Board issues a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 on or before January 15, 2006, with conditions that in Woodland's absolute and sole discretion are acceptable (i) Woodlands shall not appeal the special permit, and (ii) the Board of Selectmen shall not permit any town board or official to appeal the special permit or any other decision made by any other governmental permitting authority approving the Senior Residence development. In exercising its discretion under this paragraph, Woodlands agrees not to appeal a special permit for a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 for the Revised Project if such other conditions would not delay, alter the design of, or increase the cost of construction or operation of the Revised Project including the Senior Residence component.

(c) If the Acton ZBA denies a comprehensive permit for the Revised Project or

approves the Revised Project with conditions that are not in Woodlands absolute and sole discretion acceptable under paragraph 6(a), Woodlands may appeal the comprehensive permit to the Housing Appeals Committee; however, Woodlands shall forthwith dismiss that appeal in the event that the Town within three months of the appeal agrees to a settlement that would result in approval of the Revised Project with the Proposed Conditions and such other conditions that in Woodland's absolute and sole discretion are acceptable.

7. **Master Deeds and Mortgages**

This Agreement shall be binding on the parties hereto and their respective heirs, executors, administrators, members, successors, assigns, nominees, affiliates and designees.

Upon the closing on the purchase by Woodlands or its successor, assign, designee, nominee or affiliate of any portion of the Property comprising the Revised Project site in Acton, Woodlands shall forthwith record this Agreement (or a mutually acceptable Notice of this Agreement) with its deed in the Middlesex South District Registry of Deeds in the chain of title for the Property in Acton. Woodlands shall provide a registry-stamped copy of the recorded Agreement (or Notice) to the Board of Selectmen within five days of its being recorded. In the event Woodlands fails to record this Agreement (or Notice), the Board of Selectmen may do so. This Agreement shall run with the land comprising the Revised Project site in Acton

This Agreement shall be referenced in the Master Deed for any condominiums within the Revised Project and any Senior Residence development on the Property.

If the Property is or becomes encumbered by any deed or instrument to secure a debt, mortgage or other security interest in all or any portion of the Property in Acton, Woodlands shall use best efforts to provide promptly to the Town a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement pursuant to which this Agreement shall survive the

foreclosure of any such debt, mortgage or other security interest, it being the express intention of the parties hereto that if the Acton portion of the Property is developed pursuant to a comprehensive permit from the Acton ZBA and/or a special permit for a Senior Residence development from the Acton Planning Board, the Town of Acton shall be entitled to receive the payments set forth in paragraph 4 hereof from the person or entity developing the Property in accordance with the Revised Project.

8. Authority

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. Woodlands shall execute and append hereto a Certificate in a form mutually acceptable to Town Counsel and Woodlands counsel attesting to the authority of its signatory hereto.

9. No Waiver

Failure of any party to this Agreement to avail itself or any of the terms, covenants and conditions of this Agreement for a period of time or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder.

10. Amendments

No change, amendment modification, cancellation or termination of this Agreement hereof, or any part of this Agreement shall be valid unless all parties to this Agreement consent thereto in writing.

11. Counterparts

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

12. **Entire Agreement**

This Agreement embodies the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior Agreements and understandings relating to such subject matter.

13. **Termination**

This Agreement may be terminated by Woodlands by written notice to the Board of Selectmen (in which case this Agreement shall be of no force and effect and none of the parties hereto may directly or indirectly take any actions to enforce or rely on any of the provisions hereof), if:

(a) A comprehensive permit for the Revised Project in Westford is not issued by the Westford ZBA on or before January 15, 2006; provided, however, that if Woodlands elects to terminate this Agreement for this reason, Woodlands shall with its termination notice surrender to the Board of Selectmen any comprehensive permit for the Revised Project in Acton and any special permit for the Senior Residence development on Lot 4 in Acton and said permits shall be null and void and of no force and effect unless and until Woodlands shall have reinstated this Agreement with the Town of Acton;

(b) Woodlands appeals the comprehensive permit issued by the Westford ZBA to the Housing Appeals Committee; provided, however, that if Woodlands elects to terminate this Agreement for this reason, Woodlands shall with its termination notice surrender to the Board of Selectmen any comprehensive permit for the Revised Project in Acton and any special permit for the Senior Residence development on Lot 4 in Acton and said permits shall be null and void and of no force and effect unless and until Woodlands shall have reinstated this Agreement with the Town of Acton.

(c) A comprehensive permit for the Revised Project in Action is not issued by the Acton ZBA on or before August 15, 2005;

(d) Woodlands appeals the comprehensive permit issued by the Acton ZBA to the Housing Appeals Committee and said appeal is not resolved under paragraph 6(c) hereof;

(e) An appeal of the comprehensive permit for the Revised Project issued by the Acton ZBA, Westford ZBA or of any other governmental permit or approval for the Revised Project is commenced by any party other than Woodlands which appeal prevents construction of the Revised Project commencing on or before December 31, 2006 provided, however, both Woodlands and Town agree, at each's sole cost and expense, to vigorously defend any such appeal and to agree to attempt to mediate any such appeal before a third-party mediator; or

(f) Woodlands withdraws the application for the Revised Project for consideration by the Acton ZBA and the Westford ZBA.

14. **Provision of Emergency Services to Westford**

Subject to applicable requirements of municipal law, the Board of Selectmen is willing for the Town to provide emergency services (to wit; police, fire and ambulance) to the Westford portion of the Revised Project on terms acceptable to the Town including without limitation terms assuring that the Town of Acton is reasonably reimbursed for those services.

15. **No Waiver of Original Application**

Nothing contained in this Agreement or any other actions by Woodlands shall be considered a waiver or withdrawal of any type or kind of the original applications for comprehensive permits filed with the Acton ZBA for 296 units and the Westford ZBA for 56 units.

16. **Notices**

All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor, assign, nominee, affiliate and designee) may from time to time designate by written notice:

Woodlands:
David E. Hale, Manager
Woodlands at Laurel Hill, LLC
676 Elm Street, Suite 300
Concord, MA 01742

Town:
Board of Selectmen
c/o Town Manager
Town of Acton
472 Main Street
Acton, Massachusetts 01720

17. **Governing Law**

This Agreement and the rights and obligations of the parties hereunder shall in all respects be construed as a Massachusetts contract and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. The parties hereby irrevocably submit to the jurisdiction of the Middlesex Superior Court over any suit,

action or proceeding arising out of or relating to this Agreement.

Duly authorized and executed as a sealed instrument as of the date first written above.

WOODLANDS AT LAUREL HILL, LLC

By: _____
David E. Hale, Manager
And not individually

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 11 day of March 2005, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was Massachusetts Driver's Lic. 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 a duly authorized member of Woodlands at Laurel Hill, LLC.

ANDREA H. RISTINE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 27, 2009

_____ (Official signature and seal of notary)

My commission expires 2/27/09

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

_____
F. Dore' Hunter, Chairman

_____
Peter K. Ashton

_____
William H. Shupert, III

_____
Walter M. Foster

_____
Robert A. Johnson

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 14 day of March, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

Cheryl M Joyce (official signature and seal of notary)

My commission expires Sept 26, 2008

memo of agreement-4A

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

This First Amendment to Memorandum of Agreement ("First Amendment") is made this 9 day of May, 2005 by, between and among **Woodlands at Laurel Hill, LLC**, a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, on behalf of itself its successors, assigns and nominees ("Woodlands"); and the **Town of Acton** ("Town"), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 ("Board of Selectmen").

WHEREAS, the Town and Woodlands have entered into a Memorandum of Agreement dated March 9, 2005, with respect to Woodlands' applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals ("Acton ZBA") and the Westford Zoning Board of Appeals ("Westford ZBA") for a residential project in Acton and Westford (the "Agreement").

WHEREAS the Agreement contains certain dates by which actions are to occur.

WHEREAS, the Town and Woodlands agree that certain of those dates should be extended at this time.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged Woodlands and the Board of Selectmen agree as follows:

1. **Date for Issuance of Comprehensive Permit**

The date in Sections 3, 4(a), 4(b), 6(a), and 13(c) of the Agreement by which the Acton ZBA is to issue a comprehensive permit for the Revised Project is extended from August 15, 2005, to September 30, 2005.

2. **Authority**

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. Woodlands shall execute and append hereto a Certificate in a form mutually acceptable to Town Counsel and Woodlands counsel attesting to the authority of its signatory hereto.

3. **Counterparts**

This First Amendment may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

Duly authorized and executed as a sealed instrument as of the date first written above.

WOODLANDS AT LAUREL HILL, LLC

By: _____
David E. Hale, Manager
And not individually

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 20th day of June, 2005, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was Known to me, 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 a duly authorized member of Woodlands at Laurel Hill, LLC.

Andrea H. Ristine (official signature and seal of notary)

My commission expires 2/27/09

ANDREA H. RISTINE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 27, 2009

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

Peter K. Ashton, Chairman

F. Dore' Hunter

Lauren S. Rosenzweig

Walter M. Foster

Robert A. Johnson

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 9 day of May, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of Personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

Christen M Joyce (official signature and seal of notary)

My commission expires Sept 26, 2008

FirstAmendment to MOA-1A

SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT

This Second Amendment to Memorandum of Agreement ("Second Amendment") is made this 26th day of September, 2005 by, between and among **Woodlands at Laurel Hill, LLC**, a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, on behalf of itself its successors, assigns and nominees ("Woodlands"); and the **Town of Acton** ("Town"), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 ("Board of Selectmen").

WHEREAS, the Town and Woodlands have entered into a Memorandum of Agreement dated March _, 2005, with respect to Woodlands' applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals ("Acton ZBA") and the Westford Zoning Board of Appeals ("Westford ZBA") for a residential project in Acton and Westford (the "Agreement").

WHEREAS, the Town and Woodlands have entered into a First Amendment to the Memorandum of Agreement dated May 9, 2005 ("First Amendment").

WHEREAS the Agreement as amended by the First Amendment contains certain dates by which actions are to occur.

WHEREAS, the Town and Woodlands agree that certain of those dates should be further extended at this time.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged Woodlands and the Board of Selectmen agree as follows:

1. **Date for Issuance of Comprehensive Permit**

The date in Sections 3, 4(a), 4(b), 6(a), and 13(c) of the Agreement as amended by which the Acton ZBA is to issue a comprehensive permit for the Revised Project is extended from September 30, 2005, to December 16, 2005.

2. **Date for Issuance of Special Permit**

The date in Sections 4(b) and 6(b) of the Agreement by which the Acton Planning Board is to issue a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 is extended from January 15, 2006, to June 30, 2006.

3. **Authority**

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. Woodlands shall execute and append hereto a Certificate in a form mutually acceptable to Town Counsel and Woodlands counsel attesting to the authority of its signatory hereto.

4. **Counterparts**

This First Amendment may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

Duly authorized and executed as a sealed instrument as of the date first written above:

WOODLANDS AT LAUREL HILL, LLC

By: _____
David E. Hale, Manager
And not individually

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 20th day of September 2005, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was Driver's 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 a duly authorized member of Woodlands at Laurel Hill, LLC.

_____ (official signature and seal of notary)

My commission expires June 7, 2007

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

_____
Peter K. Ashton, Chairman

_____
F. Dore' Hunter

_____
Lauren S. Rosenzweig

_____
Walter M. Foster

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 26 day of Sept, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the

Town of Acton , proved to me through satisfactory evidence of identification, which was: examination of Known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

Christ M Kyles (official signature and seal of notary)

My commission expires Sept. 26, 2008

SecondAmendment to MOA

THIRD AMENDMENT TO MEMORANDUM OF AGREEMENT

This Third Amendment to Memorandum of Agreement ("Third Amendment") is made this 13th day of December, 2005 by, between and among **Woodlands at Laurel Hill, LLC**, a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, on behalf of itself its successors, assigns and nominees ("Woodlands"); and the **Town of Acton** ("Town"), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 ("Board of Selectmen").

WHEREAS, the Town and Woodlands have entered into a Memorandum of Agreement dated March _, 2005, with respect to Woodlands' applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals ("Acton ZBA") and the Westford Zoning Board of Appeals ("Westford ZBA") for a residential project in Acton and Westford (the "Agreement").

WHEREAS, the Town and Woodlands have entered into a First Amendment to the Memorandum of Agreement dated May 9, 2005 ("First Amendment").

WHEREAS, the Town and Woodlands have entered into a Second Amendment to the Memorandum of Agreement dated september 26, 2005 ("Second Amendment").

WHEREAS the Agreement as amended by the First Amendment and the Second Amendment contains certain dates by which actions are to occur.

WHEREAS, the Town and Woodlands agree that certain of those dates should be further extended at this time.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged Woodlands and the Board of Selectmen agree as follows:

1. Date for Issuance of Comprehensive Permit

The date in Sections 3, 4(a), 4(b), 6(a), and 13(c) of the Agreement as amended by which the Acton ZBA is to issue a comprehensive permit for the Revised Project is extended from December 16, 2005, to December 23, 2005.

2. Date for Issuance of Special Permit

The date in Sections 4(b) and 6(b) of the Agreement by which the Acton Planning Board is to issue a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 is extended from January 15, 2006, to June 30, 2006.

3. Resolution of Third Party Appeal(s)

The date in Section 13(e) of the Agreement (regarding an appeal of the comprehensive permit for the Revised Project issued by the Acton ZBA, Westford ZBA or of any other governmental permit or approval for the Revised Project) is extended from December 31, 2006, to July 1, 2007.

4. Proposed Conditions for Comprehensive Permit for Revised Project

Pursuant to Section 2 of the Agreement, Woodlands and the Board of Selectmen agree to recommend that conditions be included in the comprehensive permit for the Revised Project to be issued by the Acton ZBA substantially in accordance with the "Fifth Draft of the Approval Decision on December 19, 2005," with such modifications thereto (including modifications to Conditions Q and R) as their respective counsel may agree at or prior to the ZBA Hearing on December 19, 2005 ("Proposed Conditions").

5. Prepayment to the Town of Acton under Section 4

After final action by the Acton Planning Board on Woodlands' application under Section 3 of the Agreement for a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 (including final resolution of all appeals relating thereto), Woodlands may satisfy its payment obligations under Section 4 of the Agreement by prepayment in full to the Town of Acton in accordance with G.L. c. 44, § 53A, by certified, cashier's, treasurer's or bank check, or wire transfer, all amounts referenced under Section 4 of the Agreement, including both (a) the sum of five hundred thousand dollars ($500,000) and (b) the additional sum of ten thousand five hundred dollars ($10,500) per unit for each market rate condominium unit then *approved* (by a comprehensive permit) in the Revised Project or twenty-four thousand two hundred twenty-eight dollars ($24,228) per unit for each market rate Senior Residence unit then *approved* (by a Planning Board special permit) in the Revised Project, as then applicable, whichever is greater. Upon Woodlands making and the Board of Selectmen accepting such prepayment in full, Woodland shall have no further obligations of any type or kind under the Agreement.

6. Authority

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. Woodlands shall execute and append hereto a Certificate in a form mutually acceptable to Town Counsel and Woodlands counsel attesting to the authority of its signatory hereto.

7. Counterparts

This First Amendment may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

Duly authorized and executed as a sealed instrument as of the date first written above.

WOODLANDS AT LAUREL HILL, LLC

By: _____
David E. Hale, Manager
And not individually

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 13 day of Dec, 2005, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was known to me, 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 a duly authorized member of Woodlands at Laurel Hill, LLC.

_____ (official signature and seal of notary)

My commission expires Sept 26, 2008

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

_____
Peter K. Ashton, Chairman

_____
F. Dore' Hunter

_____
Lauren S. Rosenzweig

_____
Walter M. Foster

_____
Andrew D. Magee

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 12 day of Dec, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of Personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

Christine M. Joyce (official signature and seal of notary)

My commission expires Sept 26, 2008

ThirdAmendment to MOA

EXHIBIT G

Sign Requirements

This Decision approves the following permanent signs as shown on Sheets L4 and L6 of the Final Approved Plans, subject to the following conditions and requirements:

1. Community Entry Signs (option B) at the Laurel Hill Road entrance from Nagog Park Drive, one stating "Woodlands at Laurel Hill" and the other stating "Laurel Hill Condominiums," to be mounted side-by-side on a decorative field stone wall that also serves in part as a retaining wall. Each proposed sign, individually, shall meet the dimensional requirements of the zoning bylaw that allows freestanding residential development signs (§ 7.5.11) of up to 4 feet high with a 6 square foot maximum display area.

2. Entry Sign C at the upper end of Laurel Hill Road where it forks to form the loop through the Laurel Hill Condominiums. To match the Community Entry Sign, this sign shall read "Laurel Hill Condominiums" and shall be reduced in size to conform to the dimensional requirements of § 7.5.11 for freestanding residential development signs.

3. Entry Sign B on Great at the north side of Nagog Park Drive on the lot that has a restaurant (Bickford's) and an office building on it. Under the zoning bylaw, one freestanding sign is allowed on a lot to advertise the business or businesses on the lot. The zoning bylaw's maximum by-right dimensions for a freestanding business center sign (multiple businesses on one sign) are 10' in height and 24 square feet of display area. The proposed sign fits within the by-right dimensional constraints, but the residential signage does not advertise the businesses on the lot. This decision allows the proposed off-site residential development sign provided that (a) there shall be no other freestanding signs on the same lot (as the zoning bylaw does not allow more than one freestanding sign per lot), (b) all businesses on this lot – including future businesses - may use this sign as a business center sign and list their names on it, (c) the Applicant shall to the extent required apply for and receive the approval of the Massachusetts Outdoor Advertising Board prior to erecting the sign.

4. Entry Sign A on Great Road at the south side of Nagog Park Drive. The proposal is to replace the existing freestanding business center sign with a new business center sign to include the names for the proposed residential development. It appears that the proposed sign dimensions are nearly identical to those of the existing sign. This decision allows the proposed off-site residential development identifiers for the Woodlands' rental and condominium project components subject to the same conditions as Entry Sign B above.

FOURTH AMENDMENT TO MEMORANDUM OF AGREEMENT

This Fourth Amendment to Memorandum of Agreement ("Fourth Amendment") is made this ____ day of April, 2006 by, between and among **Woodlands at Laurel Hill, LLC**, a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, on behalf of itself its successors, assigns and nominees ("Woodlands"); and the **Town of Acton** ("Town"), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 ("Board of Selectmen").

WHEREAS, the Town and Woodlands have entered into a Memorandum of Agreement dated March _, 2005, with respect to Woodlands' applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals ("Acton ZBA") and the Westford Zoning Board of Appeals ("Westford ZBA") for a residential project in Acton and Westford (the "Agreement").

WHEREAS, the Town and Woodlands have entered into a First Amendment to the Memorandum of Agreement dated May 9, 2005 ("First Amendment").

WHEREAS, the Town and Woodlands have entered into a Second Amendment to the Memorandum of Agreement dated september 26, 2005 ("Second Amendment").

WHEREAS, the Town and Woodlands have entered into a Third Amendment to the Memorandum of Agreement dated December 13, 2005 ("Third Amendment").

WHEREAS the Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment contains certain dates by which actions are to occur.

WHEREAS, the Town and Woodlands agree that certain of those dates should be further extended at this time.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged Woodlands and the Board of Selectmen agree as follows:

1. Date for Issuance of Special Permit

The date in Sections 4(b) and 6(b) of the Agreement by which the Acton Planning Board is to issue a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on that portion of the Property in Acton designated as Lot 4 is extended from January June 30, 2006 to September 30, 2006.

2. Authority

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. Woodlands shall execute and append hereto a Certificate in a form mutually acceptable to Town Counsel and Woodlands counsel attesting to the authority of its signatory hereto.

3. Counterparts

This Fourth Amendment may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

Duly authorized and executed as a sealed instrument as of the date first written above.

WOODLANDS AT LAUREL HILL, LLC

By: _____
David E. Hale, Manager
And not individually

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS.

On this ____ day of _____, 2006, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and 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 a duly authorized member of Woodlands at Laurel Hill, LLC.

_____(official signature and seal of notary)

My commission expires _____

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

_____
Peter K. Ashton, Chairman

_____
F. Dore' Hunter

_____
Lauren S. Rosenzweig

_____
Walter M. Foster

_____
Andrew D. Magee

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this _____ day of _____, 2006, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton , proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

_____(official signature and seal of notary)

My commission expires _____