

11/27 (13)

**Christine Joyce**

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**From:** Don Johnson  
**Sent:** Tuesday, November 21, 2006 5:51 PM  
**To:** Christine Joyce  
**Cc:** Manager Department  
**Subject:** FW: Act/Laurel Hill

Chris:  
Please place on Selectmen's agenda for Monday, under Selectmen's Business.

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**From:** Daniel C. Hill [mailto:dhill@AndersonKreiger.com]  
**Sent:** Tuesday, November 21, 2006 5:30 PM  
**To:** Don Johnson  
**Cc:** Stephen Anderson; Garry Rhodes; Ryan D. Pace  
**Subject:** Act/Laurel Hill

Don,

Please find attached a cover letter and three documents in connection with the transfer of the comprehensive permit to Avalon that require the Board of Selectmen's execution at its next meeting on November 27th.

Please have the Board execute the 5th Amendment to the MOA (page 4) in triplicate. The Conservation Restriction should be executed and notarized on Page 9. The Reg. Agreement should be executed and notarized on Page 8. Please return the executed documents back to me on November 28th by overnight delivery. Once I receive them back from you, these documents will be sent to Woodlands at Laurel Hill, LLC in escrow. Woodlands and Avalon are expected to execute these documents and then record them at the Registry of Deeds on December 1, 2006.

If you have any questions, please contact me.

Thanks, Dan

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# ANDERSON & KREIGER LLP

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DANIEL C. HILL  
dhill@andersonkreiger.com

November 21, 2006

**BY EMAIL: [djohnson@acton-ma.gov](mailto:djohnson@acton-ma.gov)**

Mr. Don Johnson  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

Re: Woodlands at Laurel Hill, LLC – Transfer of Comprehensive Permit

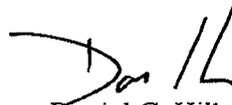
Dear Don:

In connection with the transfer of the above-referenced comprehensive permit from Woodlands at Laurel Hill, LLC to Avalon Acton, Inc., I am enclosing the following documents for the Board of Selectmen's execution:

1. The Fifth Amendment to the Memorandum of Agreement, to be executed in triplicate;
2. Regulatory Agreement; and
3. Approval form for Conservation Restriction to be executed by the Conservation Commission.

Please arrange for the Board to execute these documents (with proper notarization) at its next meeting on November 27, 2006, and then please return the originals to me by overnight delivery. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Daniel C. Hill

Enclosures

cc: Garry Rhodes, Building Commissioner

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## FIFTH AMENDMENT TO MEMORANDUM OF AGREEMENT

This Fifth Amendment to Memorandum of Agreement (“Fifth Amendment”) is made this 27th day of November, 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 (“Woodlands”); **Aria at Laurel Hill, LLC**, a Delaware limited liability company with an office c/o AvalonBay Communities, Inc., 2900 Eisenhower Ave., Alexandria, VA 22314 (“Condo Entity”); **Avalon Acton, Inc.** a Maryland corporation with an office c/o AvalonBay Communities, Inc., 2900 Eisenhower Ave., Alexandria, VA 22314 (“Rental Entity”); 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 Acton Zoning Board of Appeals (the “ZBA”) issued a Comprehensive Permit dated December 19, 2005, filed with the Acton Town Clerk on December 20, 2005, and recorded with the Middlesex South Registry of Deeds (“MSRD”) at Book 47074, Page 265, to Woodlands for a residential development project under G.L. c. 40B consisting of a Rental Component and a Condominium Component together called the Revised Project all as defined in the decision (the “Comprehensive Permit”).

WHEREAS, in connection with the Revised Project, Woodlands entered into a Memorandum of Agreement dated March 2005 with 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 (the “Mitigation”), including a First Amendment to Memorandum of Agreement dated May 9, 2005, a Second Amendment to Memorandum of Agreement dated September 26,

2005, a Third Amendment to Memorandum of Agreement dated December 13, 2005, and a Fourth Amendment to Memorandum of Agreement dated April 24, 2006 (as now or hereafter amended, herein the "Memorandum of Agreement"), notice of which is recorded in the MSRDR at Book 47814, Page 86 and in the Middlesex North Registry of Deeds at Book 20311, Page 180.

WHEREAS, pursuant to 760 CMR 31.08(5) and Conditions J.1 and J.2 of the Comprehensive Permit, by contemporaneously executing a Second Addendum to the Comprehensive Permit, Woodlands is requesting that the ZBA transfer the Comprehensive Permit to the Rental Entity, Woodlands is transferring the Rental Component to the Rental Entity and the Rental Entity is agreeing to accept said transfers in accordance with the terms of the Second Addendum and the terms hereof.

WHEREAS, pursuant to the special permit decision that was issued by the Acton Planning Board on August 8, 2006 Woodlands is assigning its rights and obligations under the Special Permit for the Condominium Component of the Revised Project to the Condo Entity, Woodlands is transferring the Condominium Component to the Condo Entity and the Condo Entity is agreeing to accept said assignment and said transfer in accordance with the terms hereof.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, Woodlands, the Condo Entity, the Rental Entity and the Board of Selectmen agree on behalf of themselves, and their respective successors and assigns as follows:

**1. Assignment and Assumption of Memorandum of Agreement**

In conjunction with the transfer of the Rental Component of the Revised Project to the Rental Entity and the transfer of the Condominium Component of the Revised Project to the Condo Entity, the Rental Entity and the Condo Entity hereby (a) assume all of Woodlands'

liabilities and obligations under the Memorandum of Agreement, (b) agree that the Rental Entity and the Condo Entity shall each be jointly and severally liable for all of the obligations of Woodlands under the Memorandum of Agreement (including without limitation the Mitigation and the simultaneous construction of the Condominium Component and the Rental Component) as if one entity were developing the entire Revised Project as originally contemplated.

**2. Estoppel**

The Town has timely and fully performed all of its obligations under the Memorandum of Agreement which were required to be performed as the date hereof, and Woodlands, the Rental Entity and the Condo Entity shall be estopped from contending otherwise. Woodlands has timely and fully performed all of its obligations under the Memorandum of Agreement which were required to be performed as of the date hereof, and the Town shall be estopped from contending otherwise. The foregoing shall not in any way affect either party's ability to contend that the other party to the Memorandum of Agreement has failed to perform any obligation under the Memorandum of Agreement which is not required to be performed until after the date hereof.

**3. Authority**

Each individual signing this Agreement warrants and represents that he or they are authorized to do so. The Rental Entity, the Condo Entity and Woodlands shall each execute, deliver 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 Fifth 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.

5. **Successors and Assigns**

This Agreement shall be binding on the parties hereto and their successors and assigns.

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

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

\_\_\_\_\_  
Walter M. Foster, Chairman

\_\_\_\_\_  
F. Dore' Hunter

\_\_\_\_\_  
Lauren S. Rosenzweig

\_\_\_\_\_  
Peter K. Ashton

\_\_\_\_\_  
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 \_\_\_\_\_

**WOODLANDS AT LAUREL HILL, LLC**

By: \_\_\_\_\_  
David E. Hale, Manager  
And not individually

**ACKNOWLEDGEMENT**

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

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 \_\_\_\_\_

**ARIA AT LAUREL HILL, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its Duly Authorized: \_\_\_\_\_

**ACKNOWLEDGEMENT**

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, 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 the duly authorized member of Aria at Laurel Hill, LLC.

\_\_\_\_\_  
(official signature and seal of notary)

My commission expires \_\_\_\_\_

**AVALON ACTON, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its Duly Authorized: \_\_\_\_\_

**ACKNOWLEDGEMENT**

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, 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 the duly authorized \_\_\_\_\_ of Avalon Acton, Inc..

\_\_\_\_\_ (official signature and seal of notary)

My commission expires \_\_\_\_\_