TOWN OF ACTON

INTERDEPARTMENTAL COMMUNICATION

DATE: MAY 31, 1983

TO: NANCY BANKS, TOWN MANAGER

FROM: JULIE LIPTON, CONSERVATION ASSISTANT

SUBJECT: VEENSTRA PROPERTY

Allen Rothermel requested that the following information be provided on subject property:

1. Topography
2. Conservation Commission's priorities for purchasing land.
3. Possible use of subject land.
4. Cost of land.

1. Topography

As can be seen from the attached map the subject area consists of three steep hills which appear to be drumlins. The grades are steepest along the north and east property lines.

2. Priorities for Purchasing Land

The Conservation Commission, in it's "Town of Acton Open Space Plan 1979-1984", listed priorities for purchasing land. The Veenstra property meets these priorities as indicated below:

Priorities of Conservation Commission 1979-1984 As Applied to Veenstra Property

Key: - + high value, ✓some value and - not valuable.

A. + land that will enhance access to or development of existing parcels of conservation land.

B. ✓ in different areas of the town, land that will provide natural, aesthetic, open and wooded areas in proximity to extensively developed sections of town.

C. land which has a specific use, i.e.:

- ground water supply protection
+ conservation and recreation
+ protection of critical and/or unique areas.

A. The Veenstra property could be highly valuable in enhancing the development of the Averett Land, since it directly abuts it.

B. The property is located in an R-2 zoning district. It is surrounded by R-2 to the south and west, R-1 to the east and light industrial to the north. The surrounding area is not "extensively" developed. The Veenstra property would therefore have only "some value" in providing open space in this section of town.

C. The land has very little value to the ground water supply. It is located south of Fort Pond Brook, but is separated by railroad tracks. Lycott does not classify it as an area to be protected.

The area has high value for Conservation and Recreation as it directly abuts Conservation land. Additional acreage could enhance the existing uses on the Averett land.

Because the area appears to be a drumlin, it has high value as unique and educational land.

3. Possible Use of Land

Conservation:

As indicated above, the property abuts the Averett Conservation land. Averett is used for hiking and horseback riding. The Veenstra property could expand the trail system and provide an educational environment for the study of glacial forms.

Residential:

The steepness of the grades would make the total site difficult to develop. To be economically feasible to a developer, the land would probably be developed as a cluster development. Under the Town of Acton Zoning Bylaw, in an R-2 District, no less than 30% of the total area of the tract shall be dedicated as common land.

4. Cost of Land

Mr. Veenstra is offering the land for $6000.00 per acre. Land fronting on streets would be offered at a higher price. I am trying to reach Mr. Veenstra for an exact price.

In summation, the Veenstra property does have some value as Conservation land, but the current price may outweigh the benefits.

Sincerely,

Julie Lipton

Julie Lipton
Conservation Assistant

JL:mw
0113M

Memo from

Norman R. Veenstra

May 20,1983

Dear Brewster,

Trying to figure a per acre price for the conservation Commission purposes is a bit difficult because I am offering the entire package to the market, including the two homes. Now Conservation is not interested in homes to acquire . . . so I have tried to come up with a per acre price of land, should Conservation want to acqire any or all parcels, devoid of homes,with say two acres retained for the homesites.

The per acre price, thus, would be $6000.00 per acre, with frontage land much higher,of course. With this kind of price,I daresay, Conservation is quite uninterested but it would be helpful to me if they would make their interest or lack of interest known to me, as I do have some other supplicants before the throne, who are asking for some decisions by me.

Regards

Norman

Norman

Selectmen's Mail

TOWN OF ACTON
INTER-DEPARTMENTAL COMMUNICATION

5/31/8

DATE: May 9, 1983

TO: Nancy Banks, Armand Dufresne, Tom Haggardy, Ralph Herrick and Dean Charter

FROM: Julie Lipton

SUBJECT: Veenstra Property

The Conservation Commission is considering the purchase of land known as the "Veenstra Property". Portions of said property abut the Boston & Maine Railroad property and the Averett Conservation Land. The area consists of approximately 68.0 acres, with two existing structures located on parcel "A" and parcel "C".

The Commission would appreciate any comments which you may have on subject property by May 18, 1983.

Sincerely,

Julie Lipton

Julie Lipton,
Conservation Assistant

Enclosure

cc: Conservation Commission

use cost - topography of land how much is flood plain wetlands another copy of Norman Veenstra

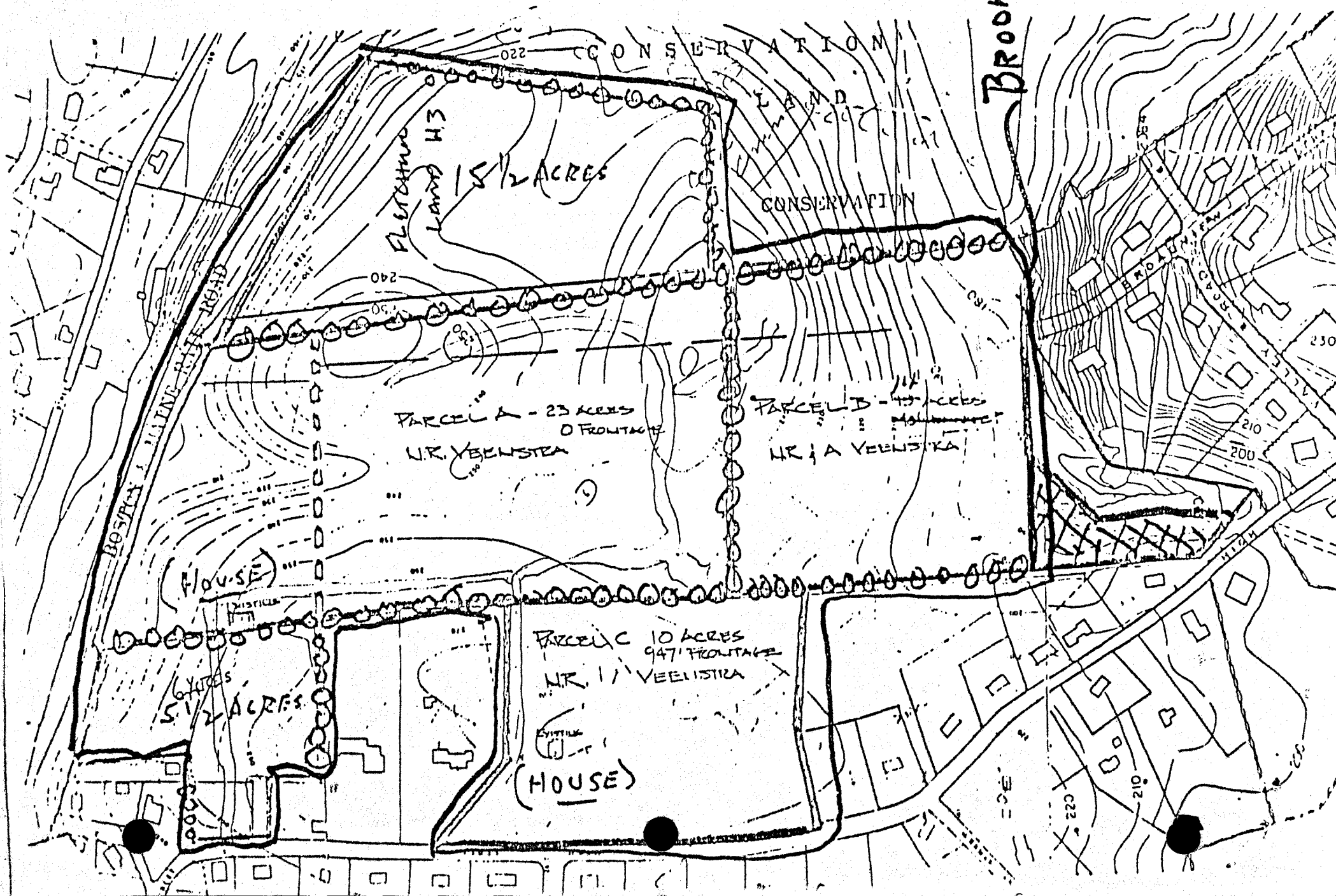
respond in relationship to criteria

justification for more ~~money~~ cons.

JL/rc
0065R

NORMAN R. VEENSTRA
Realtor - Mortgages
52 High Street
Acton, Mass. 01720
617-263-5500

APR 19 1983



TOWN OF ACTON

INTERDEPARTMENTAL COMMUNICATION

DATE: November 19, 1984

TO: Board of Selectmen

FROM: Conservation Commission

SUBJECT: Veenstra Property

By a certified mail letter dated November 2, 1984, Mr. Norman Veenstra offered a parcel of land off High Street containing approximately 23 acres (Registry of Deeds Book 11684 Page 362-369) as per the deed agreement between Mr. Veenstra and the former owner, the Audubon Society.

The Commission voted to waive their right of first refusal. The parcel is land-locked and is essential to a project involving several parcels; as such the cost is prohibitive.

However, the project is adjacent to the Averett Conservation Land and the Commission is interested in a conservation easement to provide a trail between Broadview Road and the Averett Conservation Land. This has been agreed to by Mr. Roy Smith, the purchaser, with the exact details to be determined at a later date (see attached).

The Conservation Commission hereby advises the Board of Selectmen that they have no interest in the Audubon Hill property with the exception of the proposed conservation easement.

Lynn Abbott
Conservation Assistant

LA:mw
cc:file

CHARLES G. KADISON, JR.
ATTORNEY AT LAW
179 GREAT ROAD
ACTON, MASSACHUSETTS 01720

CHARLES G. KADISON, JR.
EDMUND C. GRANT

ACTON - (617) 264-4886
LEXINGTON - (617) 861-6662

November 2, 1984

Acton Conservation Commission
DPW Building
Forest Street
Acton, MA 01720

Re: Norman Veenstra/Property off High Street, Acton

Dear Members:

Enclosed please find a Waiver of Right of Refusal which we request be signed by a majority of the members of the commission to permit the sale of Mr. Veenstra's land to Roy C. Smith for his proposed housing development.

Mr. Smith has authorized me to represent to you that he has no objection to granting a walking trail easement through the property at a location to be agreed upon provided said easement is acceptable to the governmental boards and agencies responsible for the approval of Mr. Smith's proposed housing development.

Very truly yours,

Charles G. Kadison, Jr.

CGK:clg
Enclosure
cc: Roy C. Smith
Norman Veenstra

I hereby acknowledge the above representation.

Roy C. Smith

CHARLES G. KADISON, JR.
ATTORNEY AT LAW
179 GREAT ROAD
ACTON, MASSACHUSETTS 01720

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Very truly yours,

Charles G. Kadison, Jr.

CGK:clg
Enclosure
cc: Roy C. Smith
Norman Veenstra

I hereby acknowledge the above representation.

Roy C. Smith

MAYNARD
MAIN STREET
BOSTON STREET
SCHOOL STREET
PIPER STREET
PIPER LANE
MERRIAM LA
OLDE SURREY DR
BARKER ROAD
TAYLOR ROAD
COLE'S BROOK
BARKER'S PD
FORT STREET
INDEPENDENCE STREET
DRUMMER ROAD
MEETINGHOUSE ROAD
PARKER STREET
TENNEY CIR
PURITAN ROAD
GERALD CIRCLE
ROBERT ROAD
ADAMS ST
PARKER DRIVE
PUTTER DRIVE
CARLTON
BROADVIEW ROAD
HATCH VALLEY ROAD
FAIRWAY ROAD
COUNTRY CLUB RD
CONANT
FAULKNER HILL ROAD
FLETCHER COURT
SYLVIA STREET
PINE STREET
M B T A
RAILROAD ST
MAPLE STREET
MARTIN STREET
BROOK STREET
APPLE VALLEY
ST. JAMES CIRCLE
HENNESSEY DR
PROSPECT STREET
TUTTLE DRIVE
LOTHROP ROAD
DURKEE ROAD
SPENCER ROAD
MALLARD ROAD
(ROUTE 111)
TOWNE HOUSE LANE
FRANCINE RD
NADINE RD
DORIS ROAD
BEVERLY ROAD
KELLEY
LAUREL COURT
LILAC COURT
CHADWICK ST
VANDERBELT RD
FOX HILL RD
HILLCREST DR
POND VIEW DRIVE
CLOVER HILL ROAD
CARRIAGE DR
ROBINWOOD
FERNWOOD ROAD
BRUCEWOOD
ASHWOOD
REDWOOD ROAD
PINEWOOD ROAD
OAKWOOD
DRIFTWOOD RD
BARKER'S PD
OLD MEADOW
SANDLE
FOREST

Memo from

Norman R. Veenstra October 19,1984

Dear Pamela,

Finally after many years of trying to unload my land (you may recall our talking about my land in the past), we are ready to sign a Purchase agreement with Roy Smith, who will erect elderly housing, etc., The various parcels I own are all contiguous and are all under the Forestry arrangement. So before we can sign the agreement, we need as soon as possible a simple letter from the selectmen that they are not intrested in buying the parcel, since under Forestry, we must offer 1st refusal to the Town.
I will appreciate your getting a simple letter issued at your next meeting to the effect" At the present time ~~the~~ we are not interested in buying from you the various parcels listed in the Tax records as " 24, 26, 28, 52 and Parker Street rear No. 97", total parcel approx 65 acres with two homes thereon."etc.,

I am most grateful

Norman

Norman

24	H-3B	19	Veenstra
26	H-3A	56	
28	H-3A	59	
52	H-3B	50	
97 -	H-3	166	
	H-3	237	T of A
	I-3	1	Veenstra

Memo from

Norman R. Veenstra

Oct. 15,1984

Dear Brew, Re: 24 High St., Rear-Acton

Many years ago when I bought this landlocked piece of land from the Audobon Society, I agreed when I sold it to give the usual first refusal offer to the Conservation Comm., of Acton.
I am now about to sell it and the rest of my land to Roy Smith for elderly housing(private finance).
Thus I need a letter from you indicating your receipt of my offer to sell and the Commission non- interest in buying at the present time.

I am attaching a return envelope for your prompt convenience.

With kindest personal regards

Norman

CHARLES G. KADISON, JR.
ATTORNEY AT LAW
179 GREAT ROAD
ACTON, MASSACHUSETTS 01720

CHARLES G. KADISON, JR.
EDMUND C. GRANT

ACTON - (617) 264-4886
LEXINGTON - (617) 861-6662

October 31, 1984

Acton Conservation Commission
DPW Building
Forest Street
Acton, MA 01720

Re: Norman Veenstra/Property off High Street, Acton

Dear Members:

Enclosed please find a Waiver of Right of Refusal which we request be signed by a majority of the members of the commission to permit the sale of Mr. Veenstra's land to Roy C. Smith for his proposed housing development.

Mr. Smith has authorized me to represent to you that he has no objection to granting a walking trail easement through the property at a location to be agreed upon provided said easement is acceptable to the governmental boards and agencies responsible for the approval of Mr. Smith's proposed housing development.

Very truly yours,

Charles G. Kadison, Jr.

CGK:clg
Enclosure
cc: Roy C. Smith
Norman Veenstra

TOWN OF ACTON

Inter-Departmental Communication

DATE: Oct. 24, 1984

TO: David Bolton, Assistant Assessor; Conservation and Recreation

FROM: Bernard J. Murphy, Town Manager

SUBJECT: FORESTRY LAND

Attached please find letter from Norman Veenstra requesting a letter that we are not interested in buying various parcels of land under Chapter 61, as listed. The Selectmen would like your input on this before November 8th in order that they may make a decision at their meeting of November 13th.

Thank You.

acs

OCT 25 1984
ACTON CONSERVATION COMMISSION

Memo from

Norman R. Veenstra October 19,1984

Dear Pamela,

Finally after many years of trying to unload my land (you may recall our talking about my land in the past), we are ready to sign a Purchase agreement with Roy Smith, who will erect elderly housing, etc., The various parcels I own are all contiguous and are all under the Forestry arrangement. So before we can sign the agreement, we need as soon as possible a simple letter from the selectmen that they are not interested in buying the parcel, since under Forestry, we must offer 1st refusal to the Town.
I will appreciate your getting a simple letter issued at your next meeting to the effect" At the present time ~~the~~ we are not interested in buying from you the various parcels listed in the Tax records as " 24, 26, 28, 52 and Parker Street rear No. 97", total parcel approx 65 acres with two homes thereon."etc.,

I am most grateful

Norman

Norman

CHARLES G. KADISON, JR.
ATTORNEY AT LAW
179 GREAT ROAD
ACTON, MASSACHUSETTS 01720

CHARLES G. KADISON, JR.
EDMUND C. GRANT

ACTON - (617) 264-4886
LEXINGTON - (617) 861-6662

November 2, 1984

RECEIVED
NOV 5 1984
ACTON PLANNING BOARD
Conservation

Acton Conservation Commission
DPW Building
Forest Street
Acton, MA 01720

Re: Norman Veenstra/Property off High Street, Acton

Dear Members:

Pursuant to the terms of a covenant between Norman Veenstra and the Acton Conservation Commission per deed dated May 28, 1969, and recorded in the Middlesex South Registry of Deeds in Book 11684, Page 362-369, regarding a certain parcel of land containing approximately twenty-three acres of land in Acton, copies of which are attached hereto, please be advised of the following.

Our client, Norman Veenstra, has received a bona fide offer to purchase this parcel, together with four other contiguous parcels, from Roy C. Smith, 292 Great Road, Acton, for a purchase price of $475,000 plus a 25% share in the profits from the subsequent development of the parcels. Accordingly, we transmit the terms of said offer to you and the Massachusetts Audobon Society, Inc., by certified mail relative to your rights of purchase as set out in the covenant.

Please advise as to disposition.

Very truly yours,

Edmund C Grant

Edmund C. Grant

ECG:clg
enc.
cc: Norman Veenstra
Joseph McEttrick, Esq.

CERTIFIED MAIL RETURN RECEIPT REQUESTED P277513793

24 High

BK11684 PG362

Q 7/2/9

QUITCLAIM DEED (BY CORPORATION) 798

MAY 29 09 PM 12:14 235RL ***9.00

MASSACHUSETTS AUDUBON SOCIETY, INC., a charitable corporation ~~xxxxxxxxxx~~ duly established under the laws of The Commonwealth of Massachusetts

and having ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ an office in Lincoln,

Middlesex County, Massachusetts, for consideration paid,

grants to NORMAN R. VEENSTRA, of Acton, Middlesex County, Massachusetts, (Mailing Address: 22 High Street, South Acton, Massachusetts),

~~xxx~~ with quitclaim covenants

~~xxxxxxxxxx~~

[Description and encumbrances, if any]

a certain piece or parcel of pasture land, situated in the southerly part of said Acton and containing twenty-three acres and three rods, more or less, bounded and described as follows, to wit:

Beginning at the northwesterly corner of the premises at land now or formerly of Everlin T. Shapley and land of the Fitchburg Railroad Company, thence

SOUTH 7° E	thirty-five (35) rods, thence
SOUTH 16° E	sixteen (16) rods; thence
SOUTH 6° E	forty-six and one-half (46 1/2) rods on land of Everlin T. Shapley and land of James Tuttle & Co. to land of Francis Pratt; thence
NORTH 85° E	on land of said Pratt to land of John Fletcher; thence
NORTH 10° W	on land of said Fletcher and land of James E. Billings, eighty (80) rods to land of said Fitchburg Railroad Company; thence
NORTH 62° W	nine (9) rods; thence
NORTH 73° W	thirty-six and one-half (36 1/2) rods on land of said Railroad Company to the corner and bound first mentioned.

For title, reference may be had to the Estate of Frederick W. Aldred, Middlesex Probate No. 417139 and a deed from Abbie E. Pratt to Mr. Aldred, dated August 24, 1914, and recorded with Middlesex South District Deeds, Book 3911, Page 153.

The granted premises are conveyed subject to 1969 real estate taxes which the grantee assumes and agrees to pay.

BK11684 PG363

In witness whereof, the said Massachusetts Audubon Society, Inc. has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Francis S. Moulton, Jr. its Chairman hereto duly authorized, this 21st day of ~~April~~ May in the year one thousand nine hundred and sixty-nine.

Signed and sealed in presence of

MASSACHUSETTS AUDUBON SOCIETY, INC.

by Francis S. Moulton Jr.

The Commonwealth of Massachusetts

Middlesex, ss. May 21, ~~April~~

Then personally appeared the above named Francis S. Moulton, Jr. and acknowledged the foregoing instrument to be the free act and deed of the Massachusetts Audubon Society, Inc., before me

Janette C. Reader
Notary Public

My commission expires

JANNETTE C. READER, Notary Public
My Commission Expires Dec. 21, 1973

JANNETTE C. READER ★ NOTARY PUBLIC ★ COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS AUDUBON SOCIETY CORPORATE SEAL 1896

Q 5.60

NORMAN R. VEENSTRA, of Acton, Middlesex County, Massachusetts, for consideration paid, covenants and agrees for himself and his heirs and assigns, with the ACTON CONSERVATION COMMISSION, that for a period of twenty (20) years from the date hereof, neither he nor any member of his family will sell, except as hereinafter provided, the premises in said Acton hereinafter described and hereinafter called the subject premises, to any person other than a spouse or child of such owner or to a corporation or Massachusetts business trust of which said owner owns the controlling interest unless (1) said owner has received a bona fide offer to purchase the same; (2) said owner has given to the Acton Conservation Commission (and to the Massachusetts Audubon Society, Inc.) written notice which shall be deemed to be duly given when mailed by registered or certified mail, stating the name and address of the offeror and the terms and conditions of said offer and the encumbrances subject to which the property is to be conveyed and containing an offer by said owner to sell the same upon the same terms and conditions to the Acton Conservation Commission; and (3) the Acton Conservation Commission has not within thirty (30) days after the giving of such notice mailed or otherwise given said owner written notice that it elects to purchase the same in accordance with said offer.

In the event that Acton Conservation Commission shall so elect to purchase, the deed shall be delivered and the consideration paid at Middlesex South District Registry of Deeds, at 11:00 A.M. on the thirtieth day after the date of the giving of such notice of election to purchase. In the event that the Commission does not give such notice of election to purchase within the time above specified or in the event that it shall, after giving such notice, fail to complete such purchase as hereinabove provided, then said owner shall be free thereafter to sell and convey the premises

covered by the offer to the offeror named in said owner's notice at a price not lower than that specified therein, but said owner shall not sell or convey said premises to any other person or at any lower price without again offering the same to the Acton Conservation Commission. If any owner of record of the subject premises or any part thereof shall make and record with said Deeds an affidavit stating (1) that a conveyance by him is made pursuant to a bona fide offer to purchase; (2) that he has given notice to the Acton Conservation Commission in connection with such conveyance as required by the provisions of this instrument; (3) that he has not received written notice of election to purchase given by said Commission or that it has given notice of election to purchase but has failed to complete the same in accordance with said provisions; and (4) that the conveyance is made to the person named in such notice at a price not lower than that stated therein, then such affidavit shall be conclusive evidence of compliance with the requirements of this instrument with respect to such conveyance in favor of the Grantees therein and all persons claiming through or under them. The provisions of this instrument shall not be construed to apply to bona fide mortgages of the subject premises, or any part thereof, or to any proceedings for the foreclosure thereof. Said Norman R. Veenstra and each other owner, from time to time of the subject premises, or any part thereof, shall only be liable hereunder for breaches hereof occurring during their, her or his ownership of the subject premises or portion thereof.

The subject premises are bounded and described as follows:

A certain piece or parcel of pasture land, situated in the southerly part of said Acton and containing twenty three acres and three rods, more or less, bounded and described as follows:

Beginning at the northwesterly corner of the premises at land now or formerly of Everlin T. Shapley and land of the Fitchburg Railroad Company, thence S. 7° E. thirty-five rods, thence S. 16° E. sixteen rods; thence S. 6° E. forty-six and one-half rods on land of Everlin T. Shapley and land of James Tuttle & Co. to land of Francis Pratt; thence N. 85° E. on land of said Pratt to land of John Fletcher; thence N. 10° W. on land of said Fletcher and land of James E. Billings, eighty rods to land of said Fitchburg Railroad Company; thence N. 62° W. nine rods; thence N. 73° W. thirty-six and one-half rods on land of said Railroad Company to the corner and bound first mentioned.

WITNESS my hand and seal this 28TH day of MAY 1969.

Norman R. Veenstra

THE COMMONWEALTH OF MASSACHUSETTS

~~Suffolk~~ MIDDLESEX, ss. MAY 28, 1969

Then personally appeared the above-named Norman R. Veenstra and acknowledged the foregoing instrument to be his free act and deed,

Before me,

Notary Public
My commission expires Apr 5, 1969
CHARLES C. MADISON JR.

ACTON CONSERVATION COMMISSION

WAIVER OF RIGHT OF FIRST REFUSAL

Reference is made to an Agreement dated May 28, 1969, by and between Norman R. Veenstra and the Acton Conservation Commission recorded in the Middlesex South Registry of Deeds in Book 11684, Page 367. The undersigned being a majority of the members of the Acton Conservation Commission hereby waive the right of first refusal granted to them by said Agreement so as to permit the sale of said premises to Roy C. Smith of Acton pursuant to a written Agreement dated May 4, 1984.

Executed under seal this ~~31st~~ 7th day of ~~October~~ November 1984.

[signature] Brewster Amant

Judith A. Clark Michael J. Graeme

Kenneth W. [illegible] Robert Young

[illegible] M. Place

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss. ~~October 31~~ November 7th, 1984

Then personally appeared the above named Cynthia Torkelsen and acknowledged the foregoing to be her free act and deed, before me

[signature]
Notary Public

My commission expires: June 13, 1991

EXHIBITS TO DEVELOPMENT AGREEMENT

EXHIBIT A - M:	TITLE:
Exhibit A:	Description of Development Property
Exhibit B:	Description of Averitt Land
Exhibit C:	Description of Option A Property (Conservation Area)
Exhibit D:	Conservation Deed Restriction
Exhibit E:	Guidelines
Exhibit F:	Description of Option B Property
Exhibit G:	Right of First Refusal
Exhibit H:	Lease of Senior Center
Exhibit I:	Easement to Averitt Land
Exhibit J:	Condominium Documents
Exhibit K:	Purchase & Sale Agreement for AHA Units
Exhibit L:	Purchase & Sale Agreement for Option A or B property
Exhibit M:	Conservation Area Survey

EXHIBIT E GUIDELINES

A. An Eligible Purchaser shall be defined as:

1. A Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser");

2. Who, based on the Prospective Purchaser's income and assets, does not qualify under the standards established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the fair market value of an Unrestricted Unit;

3. Who does qualify under the FHLMC or FNMA standards for a mortgage loan for 80% of the maximum Resale Price of a Restricted Unit.

B. The Acton Community Housing Corporation shall maintain a waiting list of Persons interested in purchasing Restricted Units as they become available. Although Persons listed on the wait list may not be presumed to be Eligible Purchasers, the ACHC may preliminarily screen such Persons to determine whether they may qualify as Eligible Purchasers.

C. The procedure for determining whether a Prospective Purchaser shall qualify as an Eligible Purchaser shall be as follows:

1. A Prospective Purchaser shall submit a mortgage loan application to a bank, savings and loan association, trust company, or other institutional lender (a "Bank") for purchase money financing to buy a Restricted Unit.

2. The Bank shall certify that (a) the Prospective Purchaser cannot qualify under FHLMC or FNMA standards, based on the Prospective Purchaser's income and assets, for purchased money financing for at least 80% of the Restricted Unit's Appraised Value but that (b) the Prospective Purchaser does qualify under such standards for such financing for a loan of at least 80% of the Maximum Resale Price of the aforesaid Unit.

3. The Seller shall then submit to the Town Designee the following documents:

(a) a determination of the Appraised Value and Maximum Resale Price of the Unit to be sold, determined as provided in the Agreement, the cost of such determination to be divided

equally between the Seller and the Prospective Purchaser;

(b) the Mortgage Lender's Certificate regarding the Prospective Purchaser's eligibility for a mortgage loan determined in accordance with paragraph C.2. above;

(c) a purchase and sale agreement executed by both the Prospective Purchaser and the Seller, containing a clause stating that such agreement may be rescinded should the Town disapprove of the proposed transaction; and

(d) an Affidavit of Compliance executed by both the Seller and the Prospected Purchaser pursuant to Section 3.4(e) of the Agreement.

4. The Town Designee shall review the documents submitted according to paragraph C.3. above, and within 10 days of such submission shall determine whether the Prospective Purchaser is an Eligible Purchaser pursuant the terms and conditions of the Agreement.

BYLAWS OF

AUDUBON HILL SOUTH CONDOMINIUM ASSOCIATION, INC.

ARTICLE I - DEFINITIONS

All terms and expressions herein used which are defined in Chapter 183A, Section 1, of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context indicates otherwise. Further, the additional terms defined in this Article shall, for all purposes of these By-Laws, have the meaning herein specified.

Articles of the Association shall refer to the Articles of Organization of Audubon Hill South Condominium Association Inc., (hereinafter referred to as the "Association") which are filed in the office of the Secretary of The Commonwealth of Massachusetts, a true copy of which is on file at the principal office of the Association, together with such amendments to the Articles of the Association as may from time to time be properly made.

Association shall mean Audubon Hill South Condominium Association, Inc., and shall have the same meaning as "Organization of Unit Owners" as defined in Chapter 183A, Section 1, of the General Laws of Massachusetts, i.e., "the...association owned by the unit owners and used by them to manage and regulate the condominium."

(04/13/88; 05/09/88; 07/26/88)

Board of Governors shall mean the Board of Directors of the Association.

By-Laws of the Association shall mean the By-Laws of Audubon Hill Condominium Association, Inc., as they may be amended from time to time, pursuant to the provisions contained in said By-Laws.

Condominium shall mean Audubon Hill South Condominium.

Audubon Hill South Condominium Master Deed - See Master Deed.

Audubon Hill South Condominium shall mean the premises to be submitted to the provisions of Chapter 183A of the General Laws of Massachusetts as a condominium by the Master Deed to be recorded and any amendments thereto duly adopted and recorded.

Declarant shall refer to Roy C. Smith, Trustee of High Street PCRC Trust, his successors and assigns.

Fiscal Year shall mean the calendar year, unless changed or modified by the Board of Governors.

Gender shall in the By-Laws of the Association not only refer to the masculine but also to the feminine and neuter gender, and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

Master Deed shall mean the instrument by which Audubon Hill South Condominium shall be submitted to the provisions of Chapter 183A of the General Laws of Massachusetts.

Members of the Association shall mean any person, corporation, partnership, joint venture or other legal entity which is a member of

the Association as defined in the By-Laws of the Association, the Articles of the Association and the Master Deed.

Organization of Unit Owners - See Association.

Owner - See Unit Owner.

Person shall mean an individual, corporation, unincorporated association, partnership, joint venture, trustee, conservator or administrator.

Property shall mean all the land and the common area, buildings and improvements located in the Audubon Hill South Condominium.

Restrictions shall mean any restrictions contained in the Master Deed and the By-Laws of the Association.

Rules and Regulations of the Association shall mean the Audubon Hill South Condominium Rules and Regulations as may be adopted by the Board of Governors pursuant to the provisions of the Master Deed and the By-Laws of the Association, as they may be amended from time to time.

Unit Owner shall mean the owner of said unit.

ARTICLE II - GENERAL

Section 1 - The Condominium

The Condominium is located on a parcel of land situated in Acton, Massachusetts, more particularly described in the Master Deed recorded with the Middlesex South District Registry of Deeds, and shown on the plans filed with said Master Deed entitled, "Audubon Hill South Condominium" dated , 1988, to be recorded,

said plans being the Condominium Plans hereafter referred to.

Section 2 - The Association

Audubon Hill South Condominium Association, Inc., (the "Association") has been organized to perform the functions set forth in Section 10 of said Chapter 183A and described in the By-Laws of the Association, except for those to be performed by others as set forth in the By-Laws of the Association or the Master Deed. The Association is charged with the duties and has the power prescribed by law and set forth in the Master Deed, the Articles of the Association and the By-Laws of the Association, as they may be amended from time to time. Neither the Articles of the Association nor the By-Laws of the Association shall, for any reason, be changed or interpreted so as to be inconsistent with the Master Deed.

The Association is an organization owned by the Unit Owners of the Audubon Hill South Condominium and used by them to manage and regulate the Condominium. Each Unit Owner, upon becoming a Unit Owner, shall be deemed a Member of the Association. As a member of the Association, the rights, duties, privileges, immunities and liabilities of being a Unit Owner shall be those set forth in and shall be exercised in accordance with the Master Deed, the Articles of the Association, the By-Laws of the Association and the Rules and Regulations of the Association as the foregoing may be adopted or amended by the Association or by the Board of Governors, as provided therein.

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon transfer of title of a Unit and then only to the transferee of title, except in the instance of suspension of membership as provided hereunder. Any attempt to make a prohibited transfer shall be null and void.

Section 3 - Provisions of By-Laws Applicable

The provisions of the By-Laws of the Association are applicable to the Condominium and to the use and occupancy thereof. The provisions of the By-Laws of the Association shall automatically become applicable to any property which may be added to the Condominium by act of the Declarant, its successors or assigns, or of the Association.

Section 4 - By-Laws Applicable to Present and Future Owners

All present and future owners, mortgagees, lessees and occupants of Units and their employees and any other person(s) who may use the facilities of the Condominium in any manner are subject to the By-Laws of the Association, the Rules and Regulations of the Association, the restrictions contained in the Master Deed and the Articles of the Association. Accepting a deed to a Unit, taking conveyance of a Unit, entering into a lease for use of a Unit or the act of occupying a Unit shall constitute an agreement that all of the above documents, restrictions and conditions, as they may be amended from time to time, are accepted, ratified and shall be complied with.

Section 5 - Office of the Association

The office of the Association and of the Board of Governors shall be located at the Condominium or at some other location within the Commonwealth, as may be selected from time to time by the Board of Governors and of which the Unit Owners and listed mortgagees have been given written notice.

Section 6 - Certificates of Membership

The Board of Governors may provide for the issuance of certificates of membership in the Association in a form which it shall determine. One such certificate shall be issued for each Unit and shall contain the name and address of the member or members who own such Unit, the Unit designation, its location and the beneficial interest appurtenant to said Unit. The date of issuance shall be entered in the records of the Association by the Clerk.

Section 7 - Documents Available for Review

Copies of the By-Laws of the Association, the Articles of the Association, the Rules and Regulations of the Association and the Master Deed, as they may be adopted or amended from time to time, shall be available for inspection by Unit Owners and their authorized agent during reasonable hours.

Section 8 - Termination

The Unit Owners may remove the Condominium from the provisions of Chapter 183A of the General Laws of Massachusetts and the Master Deed by the procedure set forth in the appropriate section of said Chapter 183A, as may be amended from time to time.

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, with undivided interest therein in the same percentage cf undivided interest previously held by each Unit Owner in the common areas and facilities. Further, upon such removal, the Unit Owners shall be deemed to have withdrawn the Condominium property from the provisions of said Chapter 183A.

The removal provided for in this Section and in the Master Deed shall not bar the subsequent resubmission of the property to the provisions of Chapter 183A of the General Laws of Massachusetts.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership

Every person who is an Owner of record of a Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, except that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member of the Association.

Section 2 - Voting

A member of the Association shall be entitled to a vote in the percentage of interest appurtenant to the Unit in which he holds the interest required for membership as described in Paragraph 6 of the Master Deed. When more than one person holds such interest in any Unit, all such persons shall be members of the Association and the vote for such Unit shall be exercised as they, among themselves,

determine, but in no event shall more than one vote be cast on any issue with respect to any Unit and such vote shall be cast as an entirety as provided in the By-Laws of the Association.

ARTICLE IV - BOARD OF GOVERNORS

Section 1 - Constitution

The number of governors which shall constitute the whole Board of Governors shall be at least three (3) and no more than five (5), as provided in the Master Deed. Until succeeded by the governors elected by the members, the initial governors need not be Unit Owners. Upon the expiration of the term of each governor of the first Board of Governors, the successors to such governor, elected by the members of the Association, shall be a Unit Owner. Except as provided in the Articles of the Association with respect to the first Board of Governors (including successors appointed by the Declarant), governors shall be elected on an annual basis. In any event, however, each governor shall hold office until such time as his successor has been elected and qualified, except in the event of death, resignation, suspension of membership or sale of all his Units in the Condominium which renders such person ineligible to be a governor. In the event that a corporation or other legal entity is a member of the Association, it may designate one or more natural persons who shall be eligible to serve as governor.

Section 2 - Election

Subject to the provisions of the By-Laws of the Association

concerning the first Board (or any vacancy on such first Board), at each annual meeting of the Association or at a special meeting called for this express purpose, the members shall elect governors to fill such vacancies as may exist on the Board of Governors. There shall be no cumulative voting. The candidate receiving the highest number of votes for each vacancy shall be deemed elected.

Section 3 - Resignation

Any governor may resign at any time by giving written notice to the President or to the Clerk of the Association and thereupon such resignation shall take effect at the time specified in said written notice.

Section 4 - Powers and Duties of the Board of Governors

The Board of Governors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law, or by the Master Deed, or by the By-Laws of the Association, are reserved to the members of the Association acting at a properly called meeting or as are specifically allowed to the Association. Such powers and duties of the Board of Governors shall include, but shall not be limited to the following:

a. Providing for the operation, care, upkeep and maintenance of the common areas and facilities of the Condominium and its appurtenant structures as provided in Article VIII hereof.

b. Determining the common expenses of the Condominium,

including, subject to the limitation imposed by the Association or by the restrictions contained in the Master Deed, the operation and maintenance of the property, and the allocation of income and expenses.

c. Collecting the common charges from the Owners, including the right to enforce these collections by methods described elsewhere in the By-Laws of the Association.

d. Opening bank accounts on behalf of the Association and designating signatories required therefore.

e. Leasing, managing and otherwise dealing with such Condominium facilities as may be provided for as common areas and facilities, including without thereby limiting the generality of the foregoing the right to engage a professional management company, the right to grant permits, licenses and easements over the common areas for utilities, passage rights and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

f. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to it or purchased by it or by the Association as a result of enforcement of a lien for common expenses or otherwise.

g. Obtaining insurance for the common areas and facilities and for Units as provided elsewhere in the By-Laws of the Association.

h. Making repairs, additions, improvements to or

alterations of the common areas and facilities in accordance with the other provisions of the By-Laws of the Association and as described in the Master Deed.

i. Enforcing obligations to be performed or observed by the Unit Owners imposed on them by the Master Deed, the By-Laws of the Association and the Rules and Regulations promulgated pursuant thereto, including without limiting the generality of the foregoing, legal action to collect payment of common area expenses assessed. No legal action, however, shall be commenced, except as hereinafter provided, by the Association or its Board of Governors against parties other than unit owners or their mortgagees, without the prior affirmative vote of seventy-five (75%) percent of all the Unit Owners (based on beneficial interest in the Association) and specifying as a part of the vote a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith. Such vote shall also include, as a part thereof, a special assessment on all unit owners on an amount equal to such monetary limitation, payable within thirty (30) days and deposited in a segregated account which is to be used only for such purpose. Such legal action shall not be commenced until at least seventy-five (75%) percent of such assessment has been collected and so deposited.

j. Adopting rules and regulations relating to the use, upkeep and preservation of the Condominium.

k. Promulgating and collecting fines for violation of

the Rules and Regulations, which fines shall be paid to the Association.

l. Establishing a minimum thermostat temperature setting within each Condominium Unit.

m. Designating and setting aside portions of the common areas and facilities under their control (1) for the collection and reception of mail for the Condominium residents; (2) as a central disposal and collection site for trash and other refuse; (3) as a storage area for such tools, equipment and supplies as are used in the maintenance and upkeep of the Condominium; and (4) for any other purpose which the Board of Governors, in its discretion, deems to be in the best interests of the Condominium as a whole.

n. Electing whether to purchase on behalf of the Association any Unit in the Condominium at a foreclosure sale as hereinafter provided; however, that any such purchase by the Association shall have the prior approval of eighty-five (85%) percent of the Unit Owners, excluding the Unit in question.

Section 5 - The First Board of Governors and Subsequent Boards

The first Board of Governors and their successors shall be appointed by the Declarant, including such successors in the event of vacancy, and shall consist of three (3) members who shall serve until the third annual meeting of the members of the Association held pursuant to the provisions of Article V of these By-Laws of the

Association. At each annual meeting, beginning with the third annual meeting of the members of the Association, all members of the Board of Governors shall be elected by the members of the Association to fill vacancies the Board of Governors and/or vacancies created by expiration of a term and all such successors thereafter to the Board of Governors shall be Unit Owners and members of the Association. Any governor elected to fill a vacancy in the Board of Governors otherwise created shall be elected to fill the unexpired term.

Notwithstanding anything to the contrary in these By-Laws contained, those Governors appointed or selected by the Declarant as aforesaid shall resign no later than the earlier of the following events:

a. Four (4) months after seventy-five (75%) percent of the Units in the Condominium have been conveyed to Unit purchasers; or

b. Five (5) years after conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirement imposed by the Federal National Mortgage Association (FNMA) necessitating the transfer of control of the Condominium to the Unit Owners as above provided. For this purpose, "control" means the right of the Declarant to control the Unit Owners' Association or its Board of Governors, the Condominium itself or the Unit Owners in any manner, except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold Units.

Section 6 - Resignation and Removal

Any Governor may resign at any time by instrument in writing signed and duly acknowledged by that Governor in the manner required in Massachusetts for the acknowledgment of deeds, and such resignation shall take effect as in said instrument set forth. While the Declarant shall have the right to designate the Board of Governors of its choice, the Declarant may remove any Governor with or without cause and appoint a successor, and after the expiration of the Declarant's right to designate, any Governor may be removed with or without cause, by vote of Unit Owners entitled to more than fifty (50%) percent of the beneficial interest hereunder and the vacancy resulting from such removal shall be filled in the manner provided in Section 7 of this Article. Any removal shall become effective upon the filing with the Secretary of State a certificate of officers signed by the Clerk or Assistant Clerk of the Association.

Section 7 - Vacancies in the Board of Governors

Vacancies in the Board of Governors, other than the original Board, caused by any reason other than the removal of a governor under Section 6 of this Article, shall be filled by vote of a majority of the remaining governors at a special meeting of the Board of Governors held for that purpose, which meeting shall be held promptly after the occurrence of any such vacancy, even though the remaining governors present at such meeting may constitute less than a quorum, and each person so elected shall be a governor until the next annual meeting or special meeting of the members of the

Association duly called and held for the express purpose of electing a governor to fill the vacancy for the duration of the unexpired term, except that any vacancy occurring while the Declarant has the right to designate the Board of Governors shall be filled by appointment by the Declarant. Except for members of the Board of Governors, or their successors, appointed by the Declarant, no governor shall continue to serve as such if he shall cease to be a Unit Owner or if his membership shall be under suspension.

Section 8 - Board of Governors Meeting Following First Annual Meeting

Within ten (10) days after the first annual meeting of members of the Association, there shall be a meeting of the Board of Governors at such time and place as shall be fixed by the Unit Owners at such meeting and no notice shall be necessary to the governors in order legally to constitute such meeting, provided majority of the whole Board of Governors shall be present thereat.

Section 9 - Regular Meetings

Regular meeting of the Board of Governors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Governors. Notice by first class mail or home delivery of regular meetings shall be given to each governor at least three (3) days prior to the day named for such meeting.

Section 10 - Special Meetings

Special Meetings of the Board of Governors may be called by the President of the Association on three (3) business days' notice to each governor given by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Governors shall be called by the President or Clerk in like manner and on notice on written request of at least three (3) governors.

Section 11 - Waiver of Notice of Meetings

Any governor may at any time in writing waive notice of any meeting of the Board of Governors and such waiver shall be deemed equivalent to the receipt of such notice.

Section 12 - Quorum

At all meetings of the Board of Governors, a majority of the members thereof shall constitute a quorum for the transaction of business and the vote of a majority of the governors present at a meeting at which a quorum is present shall constitute the decision of the Board of Governors. If at any meeting of the Board of Governors, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Section 13 - Fidelity Bonds

The Board of Governors must maintain a fidelity bond or insurance coverage against dishonest acts on the part of the governors, employees or volunteers responsible for handling funds belonging to or administered by the Condominium Association of Unit

Owners as hereafter provided. The premium for such bonds shall constitute a common expense.

Section 14 - Compensation of the Board of Governors

No member of the Board of Governors shall receive any compensation from the Association for acting as such, except for reimbursement of necessary and duly incurred expenses.

Section 15 - Governors Not Liable

The governors shall not be liable to the members of the Association for any mistake of judgement, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall, to the extent of their Unit ownership, indemnify and hold harmless each member of the Board of Governors against personal contractual liability to others arising out of contracts made by the Board of Governors on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed or the By-Laws of the Association. It is intended that the members of the Board of Governors shall have no personal liability with respect to any contract made by them on behalf of the Association. The first Board of Governors is specifically authorized to contract for goods or services with the Declarant, or employees or affiliates of the Declarant, whether or not such persons are members of the Board of Governors and no such contract shall be deemed to involve a conflict of interest. It is also intended that the liability of any Unit Owner arising out of any

contract made by the Board of Governors out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as the percentage interest appurtenant to the Units owned by him bears to the total percentage of beneficial interests held by all of the Unit Owners in the Condominium, except for those Units owned by the Association. Every agreement made by the Board of Governors, its agents or appointees on behalf of the Association, shall provide that the members of the Board of Governors of the Association, or their agents or appointees, as the case may be, are acting only as agents for the Association and have no personal liability thereunder, except as Unit Owners, and that each Unit Owner's liability thereunder shall be limited to that proportion of the total liability as the percentage of beneficial interest appurtenant to the Unit(s) owned by him bears to the total percentage of beneficial interest held by Unit Owners in the Condominium, exclusive of Units owned by the Association.

Section 16 - Records

The Board of Governors shall cause to be kept detailed records of the actions of the Board of Governors and of the Association, including, but not limited to, minutes of the meeting of the Unit Owners and financial records and books of account of the Association, to which records the Unit Owners and their mortgagees shall be entitled to reasonable access.

Section 17 - Annual Report

The Board of Governors shall cause an annual report of the receipts and expenditures of the Condominium to be made at the end of each fiscal year by an independent, disinterested, certified public accountant and a copy of said report shall be sent promptly to each Unit Owner. The cost of the aforesaid annual report shall be a common expense. In addition, a copy of said report shall be kept on file at the office of the Association and shall be made available for inspection by the Unit Owners, holders of mortgages on Units, and their authorized agents during reasonable business hours.

ARTICLE V - MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 1 - Annual Meetings; Election of Governors

On the first anniversary following the incorporation of Audubon Hill South Condominium Association, Inc., the Board of Governors shall call the first annual meeting of the members of the Association. Thereafter, annual meetings shall be held on the anniversary date of such meeting. In each succeeding year, the date of the annual meeting may be changed by proper amendment to the By-Laws of the Association. beginning with the second annual meeting of the members of the Association, unless the right of the Declarant to appoint members of the Board of Governors shall have previously expired as in Section 5 of Article IV provided, all members of the Board of Governors shall be elected by ballot of the members of the Association in accordance with the provisions of the By-Laws of the Association. The members of the Association may also transact such

other business of the Association as may properly come before them.

Section 2 - Location of Annual Meetings

Meetings of the members of the Asscciation shall be held at the principal office of the Association, or at such other suitable place convenient to the members of the Association as may be designated by the Board of Governors.

Section 3 - Special Meetings

It shall be the duty of the President to call a special meeting of the members of the Association as directed by the Board of Governors or upon delivery to the Clerk of a petition signed by at least one-third (1/3) in interest of the members of the Association.

Section 4 - Notice of Meetings

It shall be the duty of the Clerk to mail or deliver to each Unit Owner of record a notice of each annual and special meeting, stating the purpose(s), date, time and place thereof at least five (5), but no more than ten (10), days prior to such meeting. Mailing or delivery of a notice in the manner provided in these By-Laws shall be considered notice served. Notice of a meeting need not be given to a Unit Owner if a written waiver thereof executed by such Unit Owner or by his duly authorized attorney or agent before, during or after the meeting, is filed with the records of the meeting.

Section 5 - Quorum

Except as provided otherwise in the By-Laws of the Association, the presence in person or by proxy of a majority in

interest of the members of the Association shall constitute a quorum at all meetings of the members of the Association. If any meeting of the members of the Association cannot be held because a quorum is not presented, a majority in interest of the members of the Association who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time for which the original meeting was called.

Section 6 - Voting

The member(s) of the Association, or some person designated by each such member of the Association to act as proxy on his or their behalf, who need not be a Unit Owner, shall be entitled to cast the vote appurtenant to such Unit at any meeting of the members of the Association, provided the member is not under suspension. The designation of any proxy shall be made in writing to the Clerk and shall be revocable at any time prior to or at the meeting upon written notice to the Clerk by the member(s) so designating. Any and all members of the Association may be present at any meeting of the members of the Association, either in person or by proxy. Each member of the Association, including the Declarant, shall be entitled to cast one (1) vote at all meetings of the members of the Association, which vote shall be weighed by multiplying it by the beneficial interest percentage appurtenant to the Unit(s) owned by such member of the Association as set forth in the Master Deed; provided, however, that the vote attributable to each Unit must be

voted as an entirety and if Owners of a Unit shall be unable to agree on the vote to be cast on any issue, their right to vote on that issue shall be deemed waived. Any Units owned by the Association or Board of Governors on behalf of the Association shall not be entitled to vote and shall be excluded from the total number of Units in the Condominium when computing the proportionate interest of all Unit Owners for voting purposes.

Section 7 - Majority Defined

As used in the By-Laws of the Association, "majority of members of the Association" shall mean any aggregation of members of the Association having more than fifty (50%) percent of the beneficial interest of all members of the Association, present in person or by proxy, as determined in accordance with Section 6 of this Article. The vote of a majority of members of the Association present at a meeting at which a quorum is present shall be binding upon all Unit Owners for all purposes, except when a higher percentage vote is required by law, the Master Deed or the By-Laws of the Association.

ARTICLE VI - OFFICERS

Section 1 - Principal Officers of the Association

The principal officers of the Association shall be the President, the Clerk and the Treasurer. The initial officers shall be those designated in the Articles of Organization. Their successors shall be elected by the Board of Governors to serve as

such officers. The President and Treasurer shall be members of the Association. The Board of Governors may appoint a Vice President, Assistant Treasurer, Assistant Clerk and such other officers as it deems necessary or appropriate for the conduct of the business of the Condominium and may thereafter remove or replace said appointees at any time at the pleasure of the Board of Governors.

Section 2 - Selection and Removal of Officers

The officers shall be elected annually at the first meeting of the Board of Governors following the annual meeting of members of the Association and shall hold office at the pleasure of the Board of Governors or until their successors are elected and qualified. Upon affirmative vote of a majority of the Board of Governors at a regular or special meeting thereof called for that purpose, any officer may be removed, either with or without cause, and his successor elected.

Section 3 - President

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the members of the Association and of the Board of Governors. He shall have all of the general powers and duties incidental to the office of President, including, but not limited to, the power to appoint committees from among the members of the Association from time to time, as he may, in his discretion, decide are appropriate to assist in the conduct of the affairs of the Association.

Section 4 - Clerk

The Clerk shall keep minutes of all meetings of the members of the Association and of the Board of Governors, shall have charge of such books and papers as the Board of Governors shall direct, and shall perform all duties incidental to the office of the Clerk and as described elsewhere in the By-Laws of the Association or the Master Deed.

Section 5 - Treasurer

The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of required financial data. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Governors or the Association in such depositories as may from time to time be designated by the Board of Governors and he shall perform all duties incidental to the office of Treasurer. No payment voucher shall be paid unless and until approved by the Treasurer.

Section 6 - Execution of Documents for the Board of Governors

All agreements, contracts, deeds, leases, checks and other instruments of the Association or the Condominium shall be executed by such officer or officers of the Association or by such other person(s) as may be authorized by the Board of Governors.

Section 7 - Compensation of Officers

No officer shall receive any compensation from the

Association for acting as such, except for reimbursement of necessary and duly incurred expenses.

Section 8 - Resignation

Any officer may resign at any time by giving written notice to the Board of Governors, the President or the Clerk. Any such resignation shall take effect at the date of the receipt of such notice or any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to render it effective.

ARTICLE VII - NOTICES

Section 1 - Notice Procedure

Whenever under the provisions of the Master Deed or the By-Laws of the Association, notice is required to be given to the Association, the Board of Governors or any Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, either by mail, by depositing the same in a post office or letter box in a postpaid, sealed wrapper addressed to the Association, the Board of Governors or such Unit Owner, respectively, at such address as appears on the books of the Association, provided that such mailing is made in The Commonwealth of Massachusetts, or by delivery to said person's address. Notice shall be deemed given if mailed as of the date of mailing or if otherwise, as of the date of delivery.

Section 2 - Waiver of Notice

Whenever any notice is required to be given under the provisions of the Master Deed, the law or the By-Laws of the Association, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VIII - OPERATION OF THE CONDOMINIUM

Section 1 - Budget

a. The Board of Governors shall, from time to time and at least annually, prepare a budget for the Association and, in connection therewith, determine the amount of common expenses of the Association and allocate and assess common expenses among the Unit Owners according to the respective percentages of ownership in the Condominium as set forth in the Master Deed. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be, or which have been, obtained by the Board of Governors, pursuant to the provisions of the By-Laws of the Association. The common expenses shall also include the amounts estimated for the operation, care, upkeep and maintenance of the Condominium, including, without limitation, any amount for working capital of the Association, for a general operating reserve, an adequate reserve fund for maintenance, repair and replacement of those portions of the common areas and facilities which must be placed on a periodic basis and to make up any deficit in the common expenses of any prior year. The common expenses may also include

such amounts as may be required for the purchase or lease by the Board of Governors on behalf of all the Unit Owners, of any Unit whose Owner has elected to sell or lease such Unit, or any Unit which is to be sold at foreclosure or other judicial sale, such purchase or lease to be in accordance with the provisions of Article XII hereof.

b. In addition, a working capital fund shall be established for the initial months of Condominium operation equal to at least two (2) months' estimated common area charges for each Unit, which funds shall be collected and transferred to the Association at the time of delivery of the first Unit deed of each Unit, and which shall be maintained in a segregated account for the use and benefit of the Association. The contribution to such funds for each unsold Unit shall be paid to the Association within sixty (60) days after the date of the conveyance of the first Unit. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Governors. Amounts paid into the fund shall not be considered advance payment of regular assessments.

c. The Board of Governors shall advise all Unit Owners promptly in writing of the amount of the common charges payable by each of them, respectively, as determined by the Board of Governors and shall furnish copies of each budget on which such charges are based to all Unit Owners and to their mortgagees. The Declarant will

be required to pay common charges in full on any Unit owned by it. A separate statement will be provided each Unit Owner by the Association as to charges due for services provided by it on behalf of the Association, including the Unit Owner's share of the charges for services provided in the Condominium.

Section 2 - Payment of Common Charges

All Unit Owners shall pay the monthly and special common charges when assessed by the Board of Governors, pursuant to the provisions of the By-Laws of the Association.

No Unit Owner shall be liable for the payment of any part of the common charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him, duly recorded in the Middlesex South District Registry of Deeds, including conveyance to the Association.

Each assessment against a Unit shall also be the personal obligation of the Unit Owner, in accordance with the first paragraph of this Section. Subject to the provisions of Section 3 of this Article, a purchaser of a Unit shall not be liable for the payment of common charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit unless assumed by him or required by applicable law and a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall be subject to, but not personally liable for, a lien for unpaid common charges assessed prior to the foreclosure sale, except as otherwise provided in Paragraph 17 of the

Master Deed with respect to first mortgages.

Section 3 - Default

In the event of default by any Unit Owner in the payment of common charges, such Unit Owner shall be obligated to pay interest at an annual rate equal to two (2%) percent above the prime rate as charged by The First National Bank of Boston at the time of such default, together with all expenses, including reasonable attorneys' fees, incurred by the Board of Governors in collecting same. The Board of Governors shall seek to recover such common charges, together with interest and expenses, from Unit Owners who fail to pay such assessment within thirty (30) days after the due date (or within such shorter period of time as may be determined by the Board of Governors) by action to recover the same, including reasonable attorneys' fees, brought against such Unit Owner or by foreclosure of the lien such unpaid charges have become on the Unit(s), or by such other action, including the commencement of legal action, as the Board of Governors may deem reasonably required under the circumstances.

Section 4 - Power to Suspend Rights of Membership

In the event of default by any Unit Owner in the payment of common charges, or any other amounts owed to the Association, the Board of Governors shall have the power to suspend the Unit Owner's membership rights and privileges in the Association, including the right to serve on the Board of Governors, but such suspension shall

remain in effect only until such amounts as are owed are paid.

Section 5 - Foreclosure of Liens

In any action brought by the Board of Governors to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall be required to pay in addition to all other charges and assessments a reasonable rental for the use and occupation of his Unit, if such use continues after the foreclosure, and the plaintiff in such foreclosure action, in addition to all other rights and remedies to which it may be entitled,. shall be entitled to the appointment of a receiver to collect the same. The Board of Governors, acting on behalf of the Association, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, convey, mortgage (but not to vote the share(s) appurtenant thereto) and otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing same.

Section 6 - Statement of Unpaid Common Charges and Priority of Lien

The Board of Governors shall promptly provide any Unit Owner requesting the same, in writing, with a written statement of all unpaid common charges due from such Owner in form suitable for recording and the same, when recorded with the Middlesex South District Registry of Deeds, shall operate to discharge the Unit from any other charges not included in such statement then unpaid.

a. To the extent permitted by applicable law, any lien of the Association for common expense assessments or other charges becoming payable on or after the date or recordation of the first mortgage on any Unit shall be subordinate to said mortgage. In addition, any fees, late charges, fines or interest which may be levied by the Association in connection with unpaid assessments shall be subordinate to said mortgage.

b. A lien for common expense assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer. Any such delinquent assessments which are so extinguished may be reallocated assessed to all Unit estates as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any assessment made thereafter.

Section 7 - Maintenance

a. All maintenance and replacement of repairs to any Unit, whether structural or non-structural, ordinary or extraordinary, and to the doors and windows, electrical, plumbing, heating, air conditioning, water and sewer facilities and fixtures belonging to a Unit Owner and not part of the common areas and facilities or the areas concerning which easements have been conveyed

to the Association, shall be done by the Unit Owner and at the Unit Owner's expense, except as otherwise specifically provided herein; provided that all repair, replacement, painting or decorating of the exterior of any Unit, shall be done by the Association, or its appointee, as a common charge, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner in the same manner as a common charge and enforceable in the same manner as a common charge.

b. All maintenance, repair and replacements to the common areas and facilities or to those areas concerning which easements have been conveyed to the Association shall be done by the Board of Governors, or its appointee, and shall be included as a common expense of the Association, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner in the same manner as a common charge and enforceable in the same manner as a common charge.

Section 8 - Restrictions

a. No nuisances shall be allowed in the Condominium, nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful enjoyment of the Condominium.

b. No immoral, improper, offensive or unlawful use

shall be made of the condominium or any part thereof and all laws, zoning by-laws, ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed.

c. Signs - No signs, plaques or communication of any description shall be placed on the exterior of any Unit or any common area or facility by a Unit Owner or his agent.

Section 9 - Improvement Restriction

a. No improvements, additions, alterations or other work which in any way alters the exterior appearance or structure of any Unit from its natural or improved state existing on the date such Unit was first conveyed in fee by the Declarant shall be made or done, except as provided in the Master Deed and herein.

b. The Board of Governors may authorize that Units in common ownership be connected for the purpose of single occupancy and that for such purposes cuts be made in common walls or floors; provided, always, that the owners of the Units permitted so to combine them shall do any work in connecting Units at such owners' expense and only in the manner prescribed by the Board of Governors. Any such authorization shall be valid only if in writing signed by a majority of the Board of Governors then in office and shall become void unless the work to connect the Units shall be commenced within six (6) months after the date of authorization and shall be completed within a reasonable time thereafter. At such time as connected Units are no longer to be common ownership, the owners of such Units shall

promptly restore the common walls and/or floors between the Units at their expense and upon failure to do so, the Board of Governors may perform or cause to be performed such work, in which event such Unit Owners shall be personally liable to the Association for the cost of the work which, if not paid when demanded, shall constitute a lien on the Units in question in proportion to their respective common interests. Such lien shall be valid notwithstanding any conveyance of the Units, or any of them, out of ownership prior to demand or any filing in the Registry of Deeds to enforce the lien.

c. The Board of Governors may authorize that exclusive use of one or more common areas be assigned to one or more Units for such time and on such conditions as the Board of Governors may determine, provided such use does not interfere with the use and enjoyment of any other Unit, which conditions may, without limitation, include a requirement that the Unit Owners so benefitted pay, as additional common expenses, such costs of said common areas as the Board of Governors from time to time may determine. The failure of the Board of Governors granting said exclusive use to require payment of any such costs as a condition of such exclusive use shall not preclude those Board of Governors, or any successor Governors, from imposing reasonable additional common expenses for the exclusive use of said common areas. Unless otherwise provided in writing signed by a majority of the Board of Governors and recorded with the Middlesex South District Registry of Deeds, such rights of

exclusive use of common areas shall be personal to the Unit Owners to whom granted and shall terminate when such Unit Owners no longer own the Units so benefitted.

Section 10 - Cost Allotment of Improvements

a. If fifty (50%) percent or more, but less that seventy-five (75%) percent of the Unit Owners agree to make an improvement to the common areas and facilities or to areas concerning which an easement has been granted to the Association, the cost of such improvement shall be borne by the Unit Owners so agreeing.

b. Seventy-five (75%) percent or more of the Unit Owners may agree to make an improvement to the common areas and facilities or to areas concerning which an easement has been granted to the Association and assess the cost thereof as a common expense, but if such improvement shall cost in excess of ten (10%) percent of the then total value of the Condominium, any Unit Owner not so agreeing may apply to the Middlesex Superior Court, on such notice to the Board of Governors as the Court shall direct, for an order directing the purchase of his Unit(s) by the Association at fair market value thereof as approved by the Court. The cost of any such purchase shall be a common expense.

c. All improvements undertaken pursuant to this section shall be subject to the prior written approval of the Board of Governors.

Section 11 - Right of Access

A Unit Owner shall grant a right of access to his Unit(s) to the Association and/or any other person authorized by the Board of Governors for the purpose of making inspections or for the purpose of correcting any conditions originating in his Unit and threatening another Unit or a common area or facility, or for the purpose of performing installations, alterations or repairs to the parts of the Condominium over which said person(s) has (have) control and/or responsibility for maintenance. Requests for such access must be made in advance and entry must be at a time reasonably convenient to the Unit Owner. In an emergency, such right of entry shall be immediate, whether the Unit Owner is present or not.

Section 12 - Rules and Regulations of the Association

The use of the Units and the common areas and facilities in the Condominium shall be subject to Rules and Regulations from time to time adopted by the Board of Governors. Such Rules and Regulations shall be called Audubon Hill South Condominium Rules and Regulations and copies of such Rules and Regulations shall be made available to each Unit Owner prior to their effective date.

Section 13 - Right of Action

The Board of Governors, on behalf of the Association and any aggrieved Unit Owner, shall have the appropriate right of action against Unit Owners for failure to comply with the provisions of the Master Deed, By-Laws and Rules and Regulations of the Condominium. Unit Owners shall have similar rights of action against the Board of

Governors.

Section 14 - Ingress and Egress of Unit Owners

There shall be no restrictions upon any Unit Owner's right of ingress and egress to his or her Unit, which right shall be perpetual and appurtenant to the Unit ownership.

ARTICLE IX - INSURANCE

Section 1 - Minimum Coverage - Association

The Association shall obtain and maintain, to the extent available, the following:

a. A master policy covering all the common elements (except land, foundation, excavation and other items normally excluded from coverage), including fixtures and building service equipment to the extent that they are part of the common elements of the Condominium, as well as common personal property and supplies and other common personal property belonging to the Association; the master policy shall also include any fixtures, equipment or other property within the Units which are customarily considered part of a Unit for mortgage purposes regardless of whether such property is part of the common elements).

The master policy shall afford protection at least against the following:

(i) loss or damage by fire and other perils covered by the standard extended coverage endorsement;

(ii) all other perils which are customarily covered

with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement.

The policy shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage including those other items specifically from coverage elsewhere within this paragraph and shall include Agreed Amount and Inflation Guard Endorsements if obtainable, and construction code endorsements, if there is a construction code provision that requires change to undamaged portions of the buildings even where only part of the Condominium is destroyed by an insured hazard.

The named insured shall be the Association "for the use and benefit of the individual Owners" and each First Mortgagee, its successors and assigns, shall be named in the standard mortgage clause for each Unit on which there is such a mortgage.

The policy shall contain a clause which provides that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

In addition to the foregoing, the policy shall provide for the following:

(i) recognition of any insurance Trust Agreement (if

any there be);

(ii) a waiver of the right of subrogation against any Unit Owners individually;

(iii) the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners that are not in control of the Association; and

(iv) a "Special Condominium Endorsement" providing that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

b. Steam boiler coverage for loss or damage resulting from steam boiler equipment accidents in an amount not less than $50,000.00 per accident, per location, if there exists on the premises any steam boilers.

c. If any portion of the Condominium property is in a flood hazard area, flood insurance in an amount not less than:

(i) the maximum coverage available under the National Flood Insurance Program (NFIP) for all buildings and other insurable property within a designated flood hazard area; or

(ii) one hundred (100%) percent of current "replacement cost" of all such buildings and other insurable property.

d. Liability insurance for comprehensive general liability coverage covering all common areas, public ways of the Condominium and any other areas that are under the supervision of the

Association. Such coverage shall be for not less than $1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence and shall include, without limitation, legal ability of the insureds for property, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas, and legal liability arising out of law suits related to employment contracts of the Association, and shall provide further that such policy or policies may not be cancelled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to the First Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

e. Fidelity bonds in blanket form for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association whether or not they receive compensation for their services. The total amount of fidelity bond coverage shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of such bond, and, in any event, the aggregate amount shall not be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds, or one and one-half times the insured's estimated annual operating expenses and reserves, whichever is greater.

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression; and

(iii) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to the First Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

(iv) The premium shall be a common expense.

ARTICLE X - DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 1 - Duty to Repair or Restore

Any portion of the Condominium, including the buildings erected within the Condominium, damaged or destroyed shall be repaired or restored promptly by the Association, as provided in this Article, subject to the provisions of Chapter 183A, Section 17, of the General Laws of Massachusetts as the same may be amended from time to time.

Section 2 - Estimate of Cost

Promptly after damage to or destruction of some portion of the Condominium and thereafter as often as it deems advisable, the

Board of Governors shall obtain reliable and detailed estimates of the cost of repair or restoration. If such cost, in the opinion of the Board of Governors, may exceed Five Thousand and No/100 ($5,000.00) Dollars, the Board of Governors may retain the services of an architecture or engineer or construction consultant to assist in the determination of such estimates and in the supervision of repair and restoration.

Section 3 - Collection of Construction Funds

Construction Funds may consist of insurance proceeds, condemnation awards, proceeds of assessments against Unit Owners, payments of Unit Owners for damage to or destruction of improvements and other funds received on account of or arising out of injury or damage to the Condominium.

a. Insurance Proceeds - The Board of Governors shall adjust losses under physical damage insurance policies of the Association. Insurance proceeds from losses in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars shall be payable to the insurance trustee as hereinafter defined.

b. Assessments Against Owners - If the insurance proceeds are insufficient to effect the necessary repair or restoration of the common areas and facilities, such deficiency shall be charged against all Unit Owners as a common expense. The proceeds of assessments for such common expenses shall be paid by the Board of Governors directly to the vendor making the repairs or restoration if

the loss is less than Twenty-Five Thousand and No/100 ($25,000.00) Dollars and shall be paid to the insurance trustee, if in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars and shall be paid to the insurance trustee, if in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars.

c. Payment by Owners - Payments received from Unit Owners, pursuant to Section 5.a.2 of this Article, shall be paid by the Board of Governors to the insurance trustee, if the loss is in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars, otherwise by the Board of Governors directly to the vendor making the repairs.

d. Payments by Others - Any other funds received on account of or arising out of injury or damage to the Condominium shall be paid by the Board of Governors to the insurance trustee, if the loss is in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars, otherwise funds shall be administered directly by the Board of Governors.

Section 4 - Plans and Specifications

Any repair or restoration must be either

a. Substantially in accordance with the architectural and engineering plans and specifications for the original buildings and shall also include such improvements and fixtures as may have been installed by a particular Unit Owner and as to which payment for such repair or reconstruction is forthcoming; or

b. according to plans and specifications approved by the Board of Governors and by a majority in beneficial interest of the Unit Owners and the holders of first mortgages encumbering fifty-one (51%) percent of the Units subject to mortgages, which approvals shall not be unreasonably withheld.

Section 5 - Units

Damage or destruction of improvements situated within a Unit shall be repaired or restored, except after a determination not to repair or restore, pursuant to Section 6e. of this Article, as follows:

a. Construction Funds

1. To the extent that such damage or destruction is covered by insurance of the Association, the proceeds of such insurance or award shall be made available for the repair or restoration of the Unit.

2. To the extent that such damage or destruction is not covered by insurance of the Association, such Unit Owner shall be responsible for the cost of repair and restoration.

3. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of a Unit Owner, then the Unit Owner shall be responsible for the cost of reconstruction and repair after casualty, unless such damage is specifically covered by the insurance purchased by the Association, in which event, the Association shall be responsible for said costs.

b. Performance of Work and Payment

If there is damage to or destruction of all or part of the Condominium and the combined damage or destruction to the common areas and facilities and all affected property which the Association is responsible to insure exceeds Five Thousand and No/100 ($5,000.00) Dollars, the repair or restoration of the property shall be effected by the Association to the extent that construction funds as described in Subsection a.1. of this Section are available and to the extent that the Unit Owners make payment as hereafter provided. Each Unit Owner shall pay to the Board of Governors such sum as is necessary, according to the estimate of cost described in Section 2 of this Article, to cover any part of the cost of repair or restoration which is not covered by insurance of the Association or by a condemnation award not specifically allocated to the Unit Owner.

Section 6 - Disbursements of Construction Funds

The insurance trustee shall deduct from the construction funds its actual costs, expenses and a reasonable fee for the performance of its duties and shall disburse the balance in the following manner:

a. Damage or destruction not exceeding Twenty-Five Thousand and No/100 ($25,000.00) Dollars

Such proceeds are not payable to nor under the control of the insurance trustee, but shall be administered by the Board of Governors.

b. Payment for Repair and Restoration

The insurance trustee shall apply such balance to pay directly and to reimburse the Association for the payment of the costs of repair or restoration of such Units and in common areas and facilities, including the cost of temporary repairs for the protection of such Units and common areas and facilities pending the completion of permanent repairs and restoration, upon written request of the Association, in accordance with Section 7.a. of this Article, and upon presentation of an architect's certificate stating that the work presented by such payment has been completed satisfactorily.

c. Contribution by Owners

The Association shall maintain a separate account as to each Unit with respect to payments by Unit Owner, pursuant to Section 5.a.2 of this Article, and expenditures of such payments. General expenses of administration, such as deductions by the insurance trustee for its costs, expenses and fees, shall be charges against the Association's construction funds and against Unit Owner's payments, pursuant to Section 5.a.2. of this Article, in proportion to the amounts of each. All portions of such payments by Unit Owners not expended as herein provided shall be refunded to the Unit Owners and the mortgagees of the Units as their interests may appear.

d. Surplus Funds

If, after payment of all repairs and restoration and the refund of any excess payments by Unit Owners, pursuant to

Subsection c. of this Section, there remains any surplus funds, such funds shall be paid to the Unit Owners in proportion to their contributions resulting from assessments levied against them, pursuant to Section 3.c. of this Article; provided, however, that no Unit Owner shall receive a sum greater than that actually contributed by him. Any surplus remaining after such payment shall be paid to the Association and shall be part of its general income.

e. Determination Not to Repair or Restore

Subject to the provisions of Chapter 183A, Section 17, of the General Laws of Massachusetts, if there is destruction of the Condominium exceeding ten (10%) percent of its value prior to the casualty and Seventy-Five (75%) percent in interest of the Unit Owners do not agree to proceed with repair or restoration within 120 days after the date of casualty, any balance of construction funds, after the refund of any payments by Unit Owners, pursuant to Subsections c. and d. of this Section, shall be disbursed in accordance with the proportion of beneficial interest appurtenant to the Unit(s) owned by each Unit Owner bears to the total percentage of beneficial interest held by Unit Owners in the Condominium, excepting for those Units owned by the Association. In the event of dispute as to the percentage of destruction, or the allocation of disbursements hereunder, the same shall be submitted to arbitration in accordance with the rules of the American Arbitration Association.

Section 7 - Certificates

The insurance trustee may rely on the following certifications:

a. By the Board of Governors - The Board of Governors shall certify to the insurance trustee, in writing, as to the following matters:

1. Whether or not damage or destroyed property is to be repaired or restored

2. Whether or not, in the opinion of the Board of Governors, the cost of repair or restoration may exceed Twenty-Five Thousand and No/100 ($25,000.00) Dollars

3. The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

b. By Attorneys - The Board of Governors shall furnish the insurance trustee, in the event that any payments are to be made to a Unit Owner of mortgagee(s), with an Attorney's Certificate of Title based upon a search of the land records from the date of the recording of the original Master Deed, stating the name of the Unit Owner and the mortgagees.

Section 8 - Insurance Trustee to Administer Insurance Proceeds in the Event of Loss

The Board of Governors shall enter into and keep in force a Trust Agreement with a bank in the Commonwealth of Massachusetts with trust powers to receive, administer and disburse funds, provided

losses are in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars in each instance, pursuant to this Article. Such Trust Agreement shall incorporate the Master Deed and the By-Laws of the Association by reference and shall provide that, upon termination thereof, all monies or funds held by the insurance trustee shall be turned over only to a successor insurance trustee which shall also be a bank in the Commonwealth of Massachusetts with trust powers designated insurance trustee, pursuant to this Article. No amendment of the Master deed or the By-Laws of the Association shall be binding on the insurance trustee until the insurance trustee receives notice of such amendment.

ARTICLE XI - MORTGAGES

Section 1 - Notice to Board of Governors

A Unit Owner who mortgages his Unit shall notify the Board of Governors in writing of the name and address of the mortgagee, and such notice may be given by the mortgagee. The Board of Governors shall maintain a current list of such information and a mortgagee shall remain on such list until the Board of Governors receives written notice from such mortgagee to the contrary or a copy of the discharge of mortgage.

Section 2 - Listed Mortgagee

As used in these By-Laws, "listed mortgagee" shall mean a lender holding a first mortgage of record on a Unit of which the Unit Owner or mortgagee affected has given the notice required in Section

1 of this Article. Such mortgage shall remain a listed mortgagee until the board of Governors receives written notice from the mortgagee of withdrawal of the listing or the mortgage is discharged of record.

Section 3 - Unpaid Common Charges

The Board of Governors, whenever so requested in writing by a mortgagee of a unit, shall promptly report any then unpaid common charges due from, or any violation of the provisions of the Master Deed or these By-Laws by the Unit Owner of the mortgaged Unit which has not been cured within sixty (60) days.

Section 4 - Notice of Default

The Board of Governors, when giving notice to a Unit Owner of a default for nonpayment of common expenses or any other default or violation, shall send a copy of such notice to each mortgagee of the Unit whose name and address has theretofore been furnished to the Board of Governors.

Section 5 - Examination of Books

Each mortgagee of a Unit, shall be permitted to examine the books, accounts and records of the Association at reasonable times on business days.

Section 6 - Notice of Loss

The Board of Governors shall give each first mortgage of which they shall have a record, pursuant to Section 1 of this Article, notice whenever there is (a) damage to a mortgaged Unit in

excess of One Thousand and No/100 ($1,000.00) Dollars (notice to the mortgagee of the damaged Unit) or (b) damage to common areas and facilities in excess of Ten Thousand and No/100 ($10,000.00) Dollars (notice to all mortgagees).

ARTICLE XII - SALE OF UNITS

Section 1 - Appurtenant Interest

No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Unit, without including therein the appurtenant interest. For the purposes of this Section, "appurtenant interest" shall include, in addition to those appurtenances described in the Master Deed, and those in the By-Laws of the Association, the following:

a. such Unit Owner's undivided interest in the common areas and facilities and the rights in areas concerning which easements have been conveyed to the Association;

b. membership in the Association;

c. the interest of such Unit Owner in any other assets of the Association.

Any deed, mortgage or other instrument purporting to affect a Unit shall be deemed and taken to include the appurtenant interest, whether or not such interests are specifically included therein. No part of the appurtenant interest of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest is appurtenant or as

part of a sale, transfer or other disposition of such part of the appurtenant interest of all Units in the Condominium.

Section 2 - Waiver of Rights of Partition

In the event that a Unit shall be acquired by the Association, the Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

ARTICLE XIII - AMENDMENTS TO THE BY-LAWS OF THE ASSOCIATION

The By-Laws of the Association may be modified or amended by the affirmative vote of sixty-six and two thirds (66 2/3%) percent (or any larger percentage, if such modification or amendment affects a provision requiring a larger percentage) in beneficial interest of all members of the Association, present in person or by proxy at a meeting of such members of the Association duly called and held for such purpose.

ARTICLE XIV - CONFLICTS

In case any of the By-Laws of the Association are in conflict with the provisions of any statute, the Article of the Association or the Master Deed, the provisions of said statute, Articles of the Association or Master Deed, as the case may be, shall control.

ARTICLE XV - MISCELLANEOUS

Section 1 - Invalidity

The invalidity of any part of the By-Laws of the Association shall not impair or affect in any manner the validity, enforceability or effect of the balance of the By-Laws of the Association.

Section 2 - Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the By-Laws of the Association or the intent of any provisions thereof.

Section 3 - Waiver

No restriction, condition, obligations or provision contained in the By-Laws of the Association shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which occur.

Duly adopted by the Audubon Hill South Condominium Association, Inc., this _____ day of _____, 1988.

_____

_____

k/audsobylaws

AUDUBON HILL SOUTH CONDOMINIUM
RESTRICTIVE AGREEMENT
DEED RIDER

Attached to and made a part of that certain deed from
Roy C. Smith, Trustee of High Street PCRC Trust ("Grantor")
of 292 Great Road, Acton, Massachusetts 01720

to

("Grantee")
dated , 1988, to be recorded herewith

conveying property located at Unit No. _____, Audubon Hill South Condominium, Acton, Massachusetts (hereinafter called the "Property")

WHEREAS, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, with the Middlesex South District Registry of Deeds (hereinafter called the "Grantor") is the Declarant of a Master Deed of The Audubon Hill South Condominium in Acton, Middlesex County, Massachusetts, by Master Deed dated _____, 1988, recorded in Book _____, Page _____, said Deeds as the same may be amended from time to time; and

WHEREAS, The Town of Acton, acting through its Planning Board, has granted to the Declarant a Planned Conservation Residential Community Special Permit, dated _____, 1988, recorded with said Deeds in Book _____, Page _____, (hereinafter called the "Special Permit"), which Special Permit contains certain restrictions and conditions; and

WHEREAS, the Declarant is conveying the Property to the Grantee at a consideration which is Fifty (50%) percent below the fair market value of the Property, in conformity with and subject to and with the benefit of the terms, conditions and restrictions of said Special Permit;

NOWTHEREFORE, as further consideration from the Grantee to the Grantor for the conveyance of the Property at the "Discount Price" in accordance with the Special Permit, the Grantee, its heirs, successors and assigns, hereby agrees that the Property shall be subject to the following restrictions which are hereby imposed for the benefit of and shall be enforceable by, the Grantor, so long as it owns a unit in the condominium, the Audubon Hill South Condominium Association, Inc., as successor to the Grantor after the Grantor conveys all of the property, or the Town of Acton, acting through the Town of Acton Housing Authority, or its successors, assigns, agents and designees (hereinafter called "Town of Acton").

1. Right of First Refusal:

When the Grantee or any successor in title to the Grantee shall desire to sell, dispose or otherwise convey the Property or any portion thereof, the Grantee shall notify the Town of Acton in writing of the Grantee's intention to so convey the Property ("Notice"). The Notice shall contain an appraisal of the Property acceptable to the Town of Acton prepared by a real estate appraiser acceptable to the Town of Acton and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts, and the Notice shall set forth the Maximum Resale Price of the Property which shall be defined as the greater of the original "Discount Price" at the time of the original purchase by the Grantee or fifty (50%) percent of the Property's Fair Market Value at he time of resale (hereinafter called the "Maximum Resale Price"). Within thirty (30) days of the Town of Acton's receipt of the Notice, the Town of Acton shall notify the Grantee in writing as to whether the Town of Acton shall exercise its right of first refusal to purchase the Property. The Town of Acton agrees to release its right of first refusal in the form of a certificate in recordable form stating that the Town of Acton releases and waives its right of first refusal hereunder. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by all parties as constituting conclusive evidence that this excess amount, if any, has been paid to the Town of Acton and that the Town of Acton has waived its right of first refusal to purchase the Property.

In the event the Town of Acton notifies the Grantee that the Town of Acton does not intent to exercise its right of first refusal or if the Town of Acton fails to notify the Grantee within said thirty (30) day period, the Grantee may convey the Property to an "Eligible Purchaser" as defined in Paragraph No. 2 herein. Provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the "Eligible Purchaser" which exceeds the Maximum Resale Price, if any, shall be immediately and directly paid to the Town of Acton. Upon receipt of the excess amount, if any, the Town of Acton shall issue to the third party a certificate in recordable form indicating the Town of Acton's receipt of the excess amount and stating that the Town of Acton releases and waives its right of first refusal hereunder. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by all parties as constituting conclusive evidence that this excess amount, if any, has been paid to the Town of Acton and that the Town of Acton has waived its right of first refusal to purchase the Property.

In the event the Town of Acton within said thirty (30) days period, notifies the Grantee of the Town of Acton's intention to exercise the Town of Acton's right of first refusal, the Town of Acton may, within sixty (60) days of the date of the Town of Acton's Notice to the Grantee, elect to purchase the Property itself subject to the restrictions herein contained and at the Maximum Resale Price.

If the Town of Acton elects to purchase the Property within said sixty (60) days period, but the Town of Acton elects not to purchase the Property, the Grantee may convey the Property to an eligible purchaser subject to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price, if any, shall be immediately and directly paid to the Town of Acton. upon receive of this excess amount, if any, the Secretary shall issue to the third party a certificate in recordable form indicating the Secretary's receipt of the excess amount and indicating that the Town of Acton has waived its right of first refusal to purchase the Property. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry District of the Land Court and such certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that the excess amount, if any, has been paid to the Town of Acton and that the right of first refusal to purchase the Property set forth herein are null and void.

Failure to record the certificate provided in this Paragraph 1 shall not affect the validity of such conveyance, but the restrictions, covenants and remedies herein contained shall not be released unless such certificate is recorded.

2. <u>Maximum Resale Price and Eligible Purchaser of Restricted Units</u>:

The resale of the Property in perpetuity from the date of recording of the Master Deed, shall be restricted to the resale for a purchase price no greater than the greater of the original "Discount Price" at the time of original purchase by the Grantee or fifty (50%) percent of the Property's fair market value at the time of sale (hereinafter called the "Maximum Resale Price").

When the Grantee or any successor in title to the Grantee shall desire to sell, dispose or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Town of Acton in writing of the Grantee's intention to so convey the Property (hereinafter called the "Notice").

The Notice shall contain an appraisal of the Property acceptable to the Town of Acton prepared by a real estate appraiser acceptable to the Town of Acton and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts, and the Notice shall set forth the Maximum Resale Price of the Property. The Notice shall further set forth the name of the purchaser (hereinafter called "eligible purchaser") and shall contain a letter from an institutional lender or other mortgage lender qualified to do business in the secondary mortgage market verifying that the eligible purchaser is unable to qualify pursuant to Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC) (or their successors) personal income qualifications for a mortgage loan in a principal sum greater than the Maximum Resale Price. Within thirty (30) days of the Town of Acton's receipt of the notice, the Town of Acton shall notify the Grantee in writing of its approval or disapproval of the Maximum Resale Price and the eligible purchaser.

In the event the Town of Acton approves the maximum resale price and eligible purchaser, the Town of Acton shall issue a recordable certificate granting its approval. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that the Town of Acton has approved the sale of the Property in conformity with these restrictions and covenants.

3. <u>Resale and Transfer Restrictions</u>:

Except as otherwise stated herein, the Property or any interest therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the eligible purchaser in accordance with Paragraph 2 above) to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property determined as of a date not later than the date of transfer or conveyance of title to the Property.

(a) No conveyance, sale or transfer to an Eligible Purchaser (as approved in accordance with Paragraph 1 above) shall be valid and be deemed in accordance with the terms of this Rider unless a certificate is obtained and recorded, signed and acknowledged by the Town of Acton, or its agent or designee which refers to the Property, the Grantee thereof, the Eligible Purchaser thereof,

and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the Eligible Purchaser is in compliance with the restrictions contained in this Rider.

Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may relay upon a certificate of the type referred to in this Deed and Rider referring to the Property as conclusive evidence of the matters stated therein and may record such certificate in connection with conveyance of the Property, provided, in the case of a certificate under 2(a) above, the consideration recited in the deed or other instrument conveying the Property shall not be greater than the consideration stated in the certificate.

Within ten (10) days of the closing of the conveyance of the Property, the Grantee shall deliver to the Town of Acton a true and certified copy of the deed of the Property as recorded, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

The Grantor specifically reserves the right to record a Certificate of Approval regarding the approval of the Eligible Purchaser of the first sale of each Restricted Unit.

4. Rights of Mortgagees:

Notwithstanding anything herein to the contrary, if the holder (other than the Grantor or its designee) of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, the restrictions and covenants herein contained shall not apply to such holder upon such acquisition of the Property, any purchaser (other than the Grantor or its designee) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Grantor or its designee) of the Property from such holder. These restrictions shall, however, be in full force and effect at the time of resale of the foreclosed property by the purchaser at any foreclosure sale.

5. Covenants to Run with the Property:

The Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Grantor and the Town of Acton, its agents, successors, designees and assigns, the right to enforce the restrictions set forth in this Rider. The Grantee hereby grants to the Grantor and the Town of Acton the right to enter upon the premises for the purpose of enforcing the restrictions herein contained or of taking all actions with respect to the premises which the Grantor or Town of Acton may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions. The rights hereby granted to the Grantor or Town of Acton shall be in addition to and not in limitation of any other rights and remedies available to the Grantor or the Town of Acton for enforcement of the restrictions set forth in this Rider. It is intended and agreed that the agreements, covenants and restrictions set forth above shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Grantor and the Town of Acton, acting through its Housing Authority, their agents, successors, designees and assigns in perpetuity from the date of the recording of this Deed and Rider.

Without limitation on any other rights or remedies of the Grantor and the Town of Acton, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Rider in the absence of a certificate from the Grantor approving such sale, transfer or conveyance as provided herein or waiving the restrictions set forth herein, shall, to the maximum extent permitted by law, be voidable by the Grantor and the Town of Acton, their agents, successors, designees or assigns by suit in equity to enforce such restrictions.

6. Notice:

Any notices, demands or requests that may be given under this Rider shall be sufficiently served if given in writing and by hand delivered or posted in the United States mail by registered or certified mail, addressed to the Grantor and Grantee at the addresses written above, or if addressed to the Town of Acton, c/o Town of Acton Housing Authority, Acton, MA 01720, or such other addresses as may be specified by either party of such notice.

7. Further Assurances:

The Grantee agrees from time to time, as may be reasonably required by the Grantor or the Town of Acton, to furnish the Grantor or the Town of Acton a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other information pertaining to the Property or the Grantee's eligibility for and conformance with the these restrictions.

I/We, hereby acknowledge receipt of and agree to be bound by the within restrictions and agreements this _____ day of _____, 1988.

_____

_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Then personally appeared the above-named _____ and _____ and acknowledged the foregoing instrument to be _____ free act and deed, before me

_____
Notary Public
My Commission Expires:

k/audrestagreement(viii-xiv)

to Run with the Property:

e, for good and valuable consideration, the receipt and of which is hereby acknowledged, hereby grant and the Grantor and the Town of Acton, its agents, designees and assigns, the right to enforce the ns set forth in this Rider. The Grantee hereby grants rantor and the Town of Acton the right to enter upon the for the purpose of enforcing the restrictions herein or of taking all actions with respect to the premises Grantor or Town of Acton may determine to be necessary riate, with or without court order, to prevent, remedy any violation of the restrictions. The rights hereby the Grantor or Town of Acton shall be in addition to n limitation of any other rights and remedies available rantor or the Town of Acton for enforcement of the ns set forth in this Rider. It is intended and agreed agreements, covenants and restrictions set forth above deemed to be covenants running with the Property and binding upon and enforceable against the Grantee, the successors and assigns and any party holding title to ty, for the benefit of and enforceable by the Grantor own of Acton, acting through its Housing Authority, ts, successors, designees and assigns in perpetuity te of the recording of this Deed and Rider.

mitation on any other rights or remedies of the Grantor own of Acton, their agents, successors, designees and ny sale or other transfer or conveyance of the Property on of the provisions of this Rider in the absence of a from the Grantor approving such sale, transfer or as provided herein or waiving the restrictions set in, shall, to the maximum extent permitted by law, be y the Grantor and the Town of Acton, their agents, designees or assigns by suit in equity to enforce ctions.

s, demands or requests that may be given under this l be sufficiently served if given in writing and by red or posted in the United States mail by registered d mail, addressed to the Grantor and Grantee at the written above, or if addressed to the Town of Acton, of Acton Housing Authority, Acton, MA 01720, or such esses as may be specified by either party of such

D'AGOSTINE & LEVINE, P.C.
ATTORNEYS AT LAW
268 MAIN STREET
ACTON, MASSACHUSETTS 01720
508-263-7777
FAX 508-264-4867
CABLE "DALYN"

JULIAN J. D'AGOSTINE
LOUIS N. LEVINE
STANLEY L. GORDON
F. ALEX PARRA
CATHY S. NETBURN
BARBARA BURNES LANDRY*
GREGORY GAUDETTE
*ADMITTED NEW HAMPSHIRE

CONVEYANCING OFFICE
289 GREAT ROAD
ACTON, MASSACHUSETTS

BOSTON OFFICE
ONE BOSTON PLACE

January 17, 1989

Mr. Don Johnson,
Town Manager
Town of Acton
Town Hall
Acton, MA 01720

Re: Roy C. Smith/Audubon Hill, Acton, MA

Dear Mr. Johnson:

I am writing to follow up on several telephone conversations between Roy Smith and yourself, as well as ourselves, concerning the elderly center.

You will recall that the main question and issue concerned Roy's desire to come to a mutually satisfactory agreement with the Town to insure that the elderly center was kept in good condition. Specifically, the main concerns were related to the upkeep of the landscaping, lawns and the painting of the outside of the building.

The two methods of insuring such upkeep appearance are to either have the Town agree to pay a monthly condominium fee to the Condominium Association and to have the Association contract for such upkeep with the same service-provider providing similar services to the Condominium, or to have the Town agree to be responsible for such upkeep as a covenant and condition of acceptance and recording of the deed with a provision for some form of voluntary lien in the event the elderly center was not kept up to good standards.

At the time of our last conversation; you were leaning toward the latter approach, but we were both unsure as to the legality of the

Town's Agreement to the voluntary lien. At such time, you were going to speak to Town Counsel to obtain his opinion and ideas on the subject.

Would you please update both Roy and myself on the status of the resolution of this issue.

Very truly yours,

D'AGOSTINE & LEVINE, P.C.

By: _____
Stanley L. Gordon

SLG:lgw

cc: Roy Smith

DON P JOHNSON
TOWN MANAGER

TOWN OF ACTON

TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 264-9612

BOARD OF SELECTMEN
WILLIAM F. WEEKS, CHAIRMAN
CHARLES E. KOSTRO, JR., VICE-CHAIRMAN
NANCY E. TAVERNIER, CLERK
F. DORE' HUNTER
DONALD R. GILBERTI

April 10, 1989

F

Mr. Norman Cohen
Palmer & Dodge
One Beacon Street
Boston, MA 02108

AUDUBON HILL

Subject: Senior Center Maintenance

Dear Norm:

In the crush of Town Meeting, I have delayed dealing with the attached questions from Roy Smith's attorney, Stan Gordon. Please give me a call when you receive this letter and let's discuss the alternatives.

Very truly yours,

Don P. Johnson
Town Manager

cc: Dean Charter
Board of Selectmen

NOTE TO FILE -
DETAILS WERE RESOLVED IN SUBSEQUENT COMPREHENSIVE DEVELOPMENT AGREEMENT.
DPJ

D'AGOSTINE, LEVINE & GORDON, P.C.
ATTORNEYS AT LAW
268 MAIN STREET
ACTON, MASSACHUSETTS 01720-0223
508-263-7777
FAX 508-264-4867
OR 508-264-4868

JULIAN J. D'AGOSTINE
LOUIS N. LEVINE
STANLEY L. GORDON
F. ALEX PARRA
CATHY S. NETBURN

BOSTON OFFICE:
ONE BOSTON PLACE

CABLE "DALYN"

RECEIVED
APR - 5 19

April 4, 1989

Mr. Don Johnson,
Town Manager
Town of Acton
Town Hall
Acton, Massachusetts 01720

Re: Audubon Hill South Condominium and Audubon Hill North Condominium, High Street, Acton, Massachusetts

Dear Mr. Johnson:

Enclosed herewith please find a copy of my letter dated January 17, 1989.

Would you please be so kind as to respond so that we can finalize this matter.

Thank you for your consideration in this matter.

Very truly yours,

D'AGOSTINE, LEVINE & GORDON, P.C.

By: Stanley L. Gordon pc
Stanley L. Gordon

SLG:pc
Enclosure

j/audubon(ii)

294 GREAT ROAD • ACTON, MA 01720 • (508) 263-0011

R. Smith Associates Inc.

REALTOR

$210,000

≅ 200,000 pre construction
just below

AUDUBON HILL

Acton, Massachusetts

Audubon Hill is located in Acton, a town noted for its convenient access to major commuter routes and for its commitment to preserving the environment. With characteristic Yankee pride, Acton residents have strived to maintain the rich heritage of their town. The essence of New England is captured in the town center with its antique homes, church, historic town hall and the Issac Davis monument.

Acton has much to offer people of all ages: award winning school system, extensive library, excellent shopping, public transportation and acres of conservation land. There are numerous active community organizations whose efforts provide Seniors with many services and recreation programs.

Tucked into the woods at the top of the hill are seventy homesites on seventy-one acres...Audubon Hill...a new community of condominium homes in a neighborhood that displays respect for the history and pride of this special town.

Walking, cross-country trails and the tennis court invite the residents to enjoy the outdoors. A recreation building for the exclusive use of Audubon Hill residents will provide a convenient place to meet.

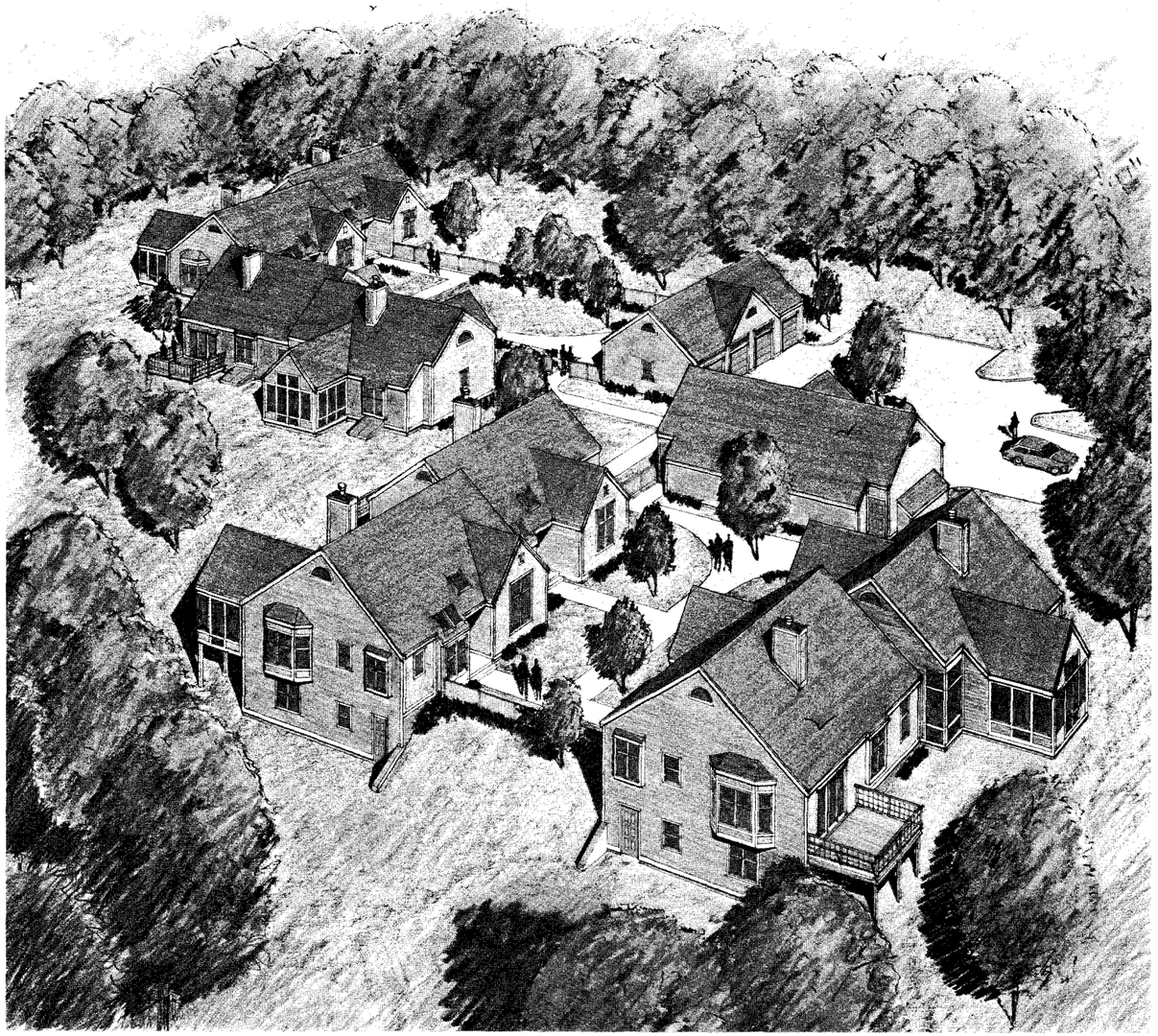
In addition, the developer, Roy Smith, has donated the Elderly Center to the town. The Center will house the offices of the Council on Aging and will be available to all Seniors in town for their various activities, including health clinics and the lunch program.

The homes of Audubon Hill, available to persons 55 years or older, are surrounded by conservation land and spectacular views of the picturesque Nashoba Valley.

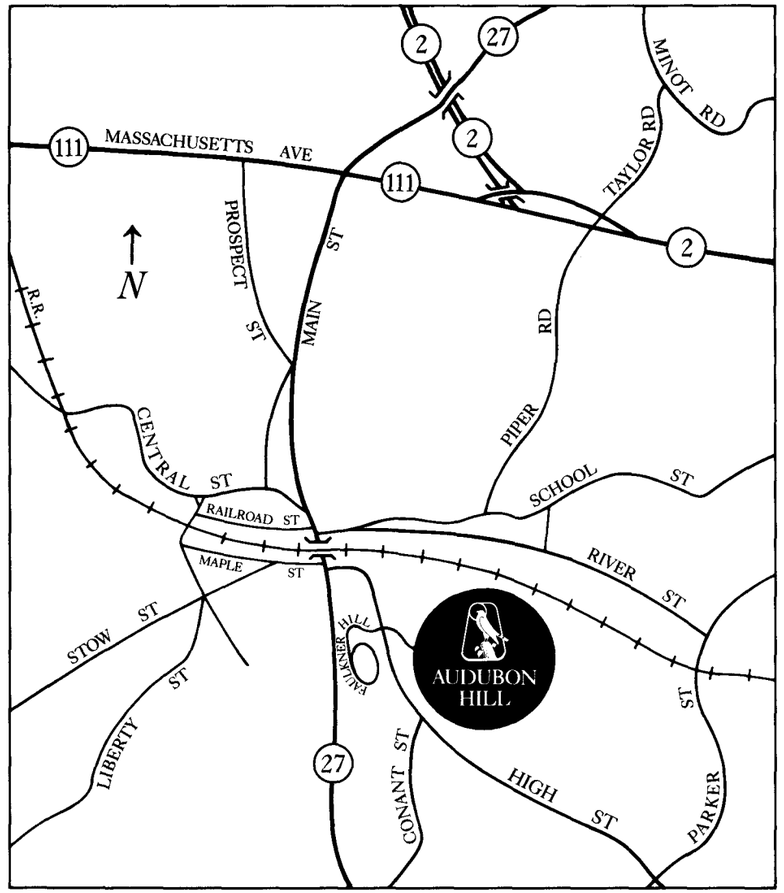
You will love the unique design of these attractive duplex condominium homes. Each residence is arranged in a four unit cluster which forms a common courtyard. Privacy, however, has not been sacrificed as each home features a secluded back yard and private deck.

Carefully designed with today's achieving adults in mind, our two models, The Cardinal and The Blue Jay, have the benefit of low maintenance design and handicapped access.

Entry with skylight, formal living room and dining area, fully-equipped kitchen, two full baths, den or guest room plus a full basement are some of the features offered at Audubon Hill. For an added feeling of security, the one-car garage can be accessed without leaving the confines of the courtyard.



—*Acton*—



From Route 2, take the Route 27 exit, head south on 27 towards Maynard. After the railroad bridge, take an immediate left on High street. Audubon Hill will be on the left, shortly after the curve in the road.

—*The Reward*—
of a lifetime

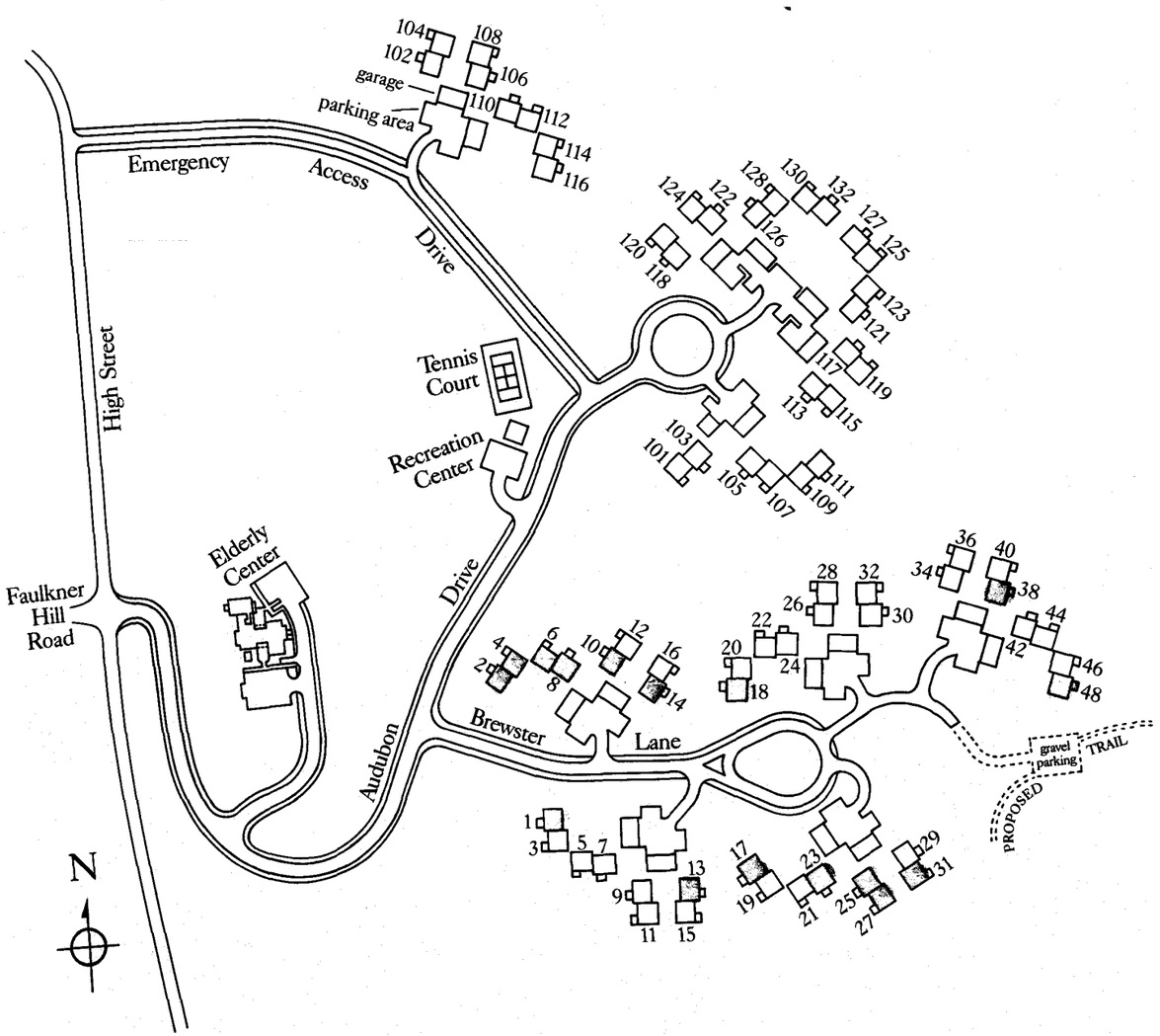
Marketed by

R. Smith Associates Inc.

292 Great Road
Acton, MA 01720
(508) 263-0011

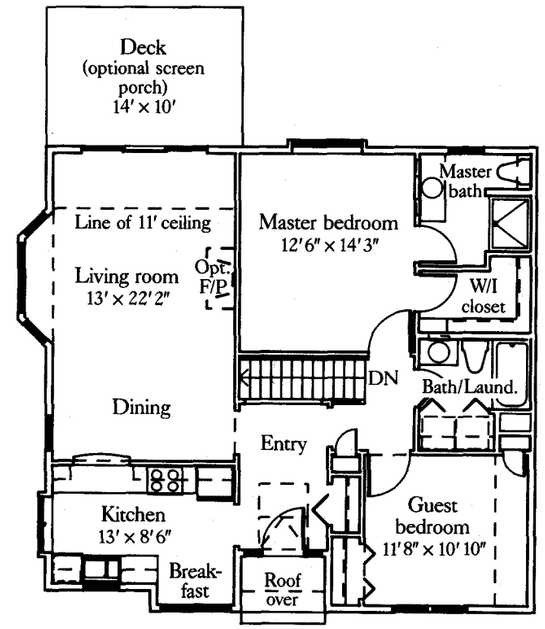
Designed by: Paula St. Pierre

AUDUBON
HILL



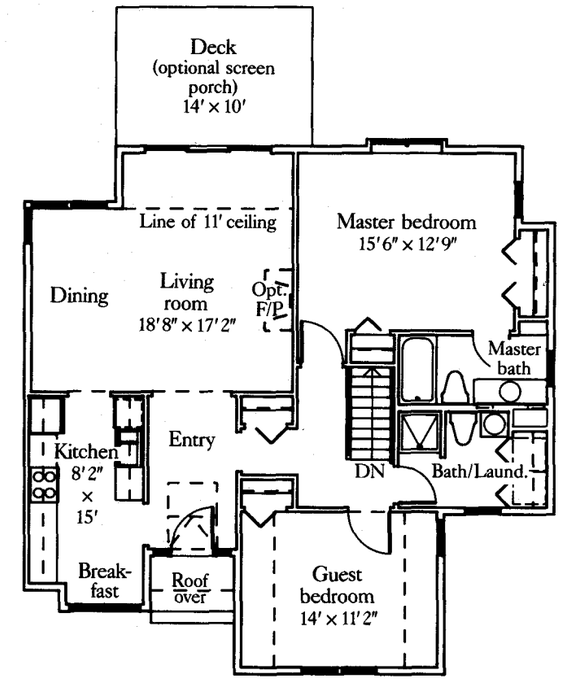
The Cardinal

1,085 sq ft.



The Blue Jay

1,135 sq ft.



- 2×6 exterior wall construction
- Cedar clapboards
- Insulated windows & sliders with screens
- Deck or optional screened porch
- Fully insulated: R-19 exterior walls, R-30 ceilings
- Prewired for cable t.v., telephone
- Efficient gas heat & hot water
- Smoke detectors
- Kitchen with breakfast area
- Dining area
- Stylish kitchen cabinets & bathroom vanities

- Range & hood
- Refrigerator
- Dishwasher
- Two full baths, one with stall shower
- Washer & dryer hook-ups
- Easy care vinyl flooring in kitchen & baths
- Wall to wall carpeting in living room, dining area, bedroom, den & entry
- Full basement with optional finish
- Optional fireplace in living room
- Optional screened porch
- Garage with automatic door opener

All dimensions are approximate

9/11/89 ESTIMATED AUDUBON HILL OPERATING BUDGET

	PERCENT % OF TOTAL	PROJECTED 70 UNITS
ANNUAL INCOME:UNIT ASSESSMENTS.	85.71	$112,000
ADDITIONAL INCOME---2 MONTH WORKING CAPITAL	14.29	$18,667
---FUNCTION FEES		
GROSS ANNUAL INCOME-ALL SOURCES:	100	$130,667
EXPENSES:		
ADMINISTRATIVE:		
MANAGEMENT FEE (R. SMITH MANAGEMENT)	8.42	$11,000
LEGAL AND AUDIT	1.53	$2,000
OPERATING:		
RECREATION CENTER HEAT AC	0.77	$1,000
RECREATION CENTER CLEANING/SUPPLIES	0.77	$1,000
WATER AND SEPTIC	2.68	$3,500
COMMON ELECTRICITY	3.06	$4,000
TRASH AND GARBAGE REMOVAL	7.65	$10,000
REPAIRS AND MAINTENANCE:		
SNOW REMOVAL/SAND/WALKS	7.65	$10,000
GROUNDS MANTENANCE	19.13	$25,000
ELECTRICAL REPAIR AND FIXTURES	0.38	$500
PRIVATE STREET/SWEEPING	0.38	$500
EXTERIOR PAINTING	7.65	$10,000
FIXED EXPENSES:		
INSURANCE PREMIUMS	8.42	$11,000
TOTAL EXPENSES:	68.49	89500.00
REPLACEMENT RESERVES:		
0/20 YEARS RESURFACE STREETS,WALKS,TENNIS COURT	7.65	$10,000
0/25 YEARS ROOFS	2.30	$3,000
0/40 YEARS SEPTIC REPAIR	1.53	$2,000
TOTAL REPLACEMENT RESERVES:	11.48	$15,000
TOTAL ANNUAL EXPENSES AND REPLACEMENT RESERVES:	79.97	$104,500
TOTAL ANNUAL NET SURPLUS(DEFICIT)	20.03	$26,167
MONTHLY CONDO FEE		$124.40

AUDUBON HILL UNIT TYPES
JANUARY 29, 1989

PHASE#	UNIT#	TYPE	FND.
S-1	1	B	F/B
S-1	3	A	PART
S-1	5	A(R)	REAR
S-1	7	B(R)	REAR
S-1	9	B	REAR
S-1	11	A	REAR
S-1	13	B(R)	F/B
S-1	15	A(R)	END
S-2	17	B	F/B
S-2	19	A	PART
S-2	21	A(R)	PART
S-2	23	B(R)	F/B
S-2	25	B(HP)	SLAB
S-2	27	A(S)	SLAB
S-2	29	B(R)	F/B
S-2	31	A(R)	F/B
S-3	34	B(R)	REAR
S-3	36	A(R)	REAR
S-3	38	B	REAR
S-3	40	A	REAR
S-3	42	B(R)	REAR
S-3	44	A(R)	REAR
S-3	46	A	PART
S-3	48	B	F/B
S-4	18	B(R)	F/B
S-4	20	A(R)	PART
S-4	22	A	REAR
S-4	24	B	REAR
S-4	26	B(R)	REAR
S-4	28	A(R)	REAR
S-4	30	B	REAR
S-4	32	A	REAR
S-5	2	B(S)(R)	SLAB
S-5	4	A(S)(R)	SLAB
S-5	6	A	F/B
S-5	8	B	F/B
S-5	10	B(R)	F/B
S-5	12	A(R)	END
S-5	14	B	F/B
S-5	16	A	END

PHASE#	UNIT#	TYPE	FND.
N-1	101	A(R)	REAR
N-1	103	B(R)	REAR
N-1	105	B	REAR
N-1	107	A	REAR
N-1	109	A(R)	REAR
N-1	111	B(R)	REAR
N-2	113	B	F/B
N-2	115	A	END
N-2	117	B(R)	F/B
N-2	119	A(R)	END
N-2	121	B	F/B
N-2	123	A	PART
N-2	125	A(R)	REAR
N-2	127	B(R)	REAR
N-2	118	B(R)	REAR
N-2	120	A(R)	END
N-2	122	B	F/B
N-2	124	A	END
N-2	126	B(HP)(R)	SLAB
N-2	128	A(S)(R)	SLAB
N-2	130	A	REAR
N-2	132	B	REAR
N-3	102	B(R)	F/B
N-3	104	A(R)	END
N-3	106	B	F/B
N-3	108	A	END
N-3	110	B(R)	F/B
N-3	112	A(R)	PART
N-3	114	A	REAR
N-3	116	B	REAR

(S)	SLAB LAYOUT
(HP)	HANDICAP ACCESSIBLE LAYOUT
(R)	REVERSED LAYOUT
SLAB	SLAB ON GRADE
F/B	FULL BASEMENT
END	END WALKOUT
REAR	REAR WALKOUT
PART	PARTIAL WALKOUT

No. _____

AUDUBON HILL
SENIOR HOUSING
LOTTERY APPLICATION

SECTION 1 - APPLICANT IDENTIFICATION

a) Name_____ b) Soc. Sec. #_____

c) Address_____
Street City/Town State Zip Code

d) Home Phone ( ) _____ e) Work Phone ( ) _____

f) Age _____ g) Number of Persons in Household _____

SECTION 2 - APPLICANT PRIORTY ASSESSMENT

		YES	NO
a)	Are you an Acton resident?	___	___
b)	Are you a current Acton town employee?	___	___
c)	Are you a retired Acton town employee?	___	___
d)	Are you a parent of a current Acton resident?	___	___
e	Are you Handicapped)	___	___

SECTION 3 - FINANCIAL INFORMATION

TOTAL ANNUAL INCOME

		Amount	Employer/Source
a)	Applicant:	$ _____	_____
b)	Applicant - Other Income:	$ _____	_____
c)	Household - Other Income:	$ _____	_____
d)	Total Household Income =	$ _____	

SECTION 4 - CERTIFICATION

I, the undersigned, understand that my signature is made under the pains and penalties of perjury and I further warrant and represent that all statements made on this application are true and correct. The signature below represents consent to the verification of the personal and financial information contained in this application.

_____ _____
Signature of Applicant Date Application Signed

AUDUBON HILL, ACTON MASSACHUSETTS

INSTRUCTIONS TO APPLICATION FORM

This set of instructions is intended to help you complete the enclosed Lottery Application Form. Please neatly print or type all of the information required on the application form.

SECTION 1 - APPLICANT IDENTIFICATION

a) NAME - Please print or type only the name of one person who will be representing the household as the applicant. The applicant can be the Head of the Household or another person residing in the applicant household.

b) SOC. SEC. # - This item requires that the person named in subsection (a) above print or type his or her social security number.

c) ADDRESS - Current residential address of the person named in (a) above. It is important that you provide all of the information so that we may notify you of your placement in the Lottery.

d) HOME PHONE - Current residential phone number.

e) WORK PHONE - Your business or work telephone number where you can be reached during the business day.

f) AGE - In the case of two person households, at least one individual must be fifty-five or older.

g) NUMBER OF PERSONS - The Guidelines specify that no more than three persons may reside in these units, two of which must be fifty-five or older.

SECTION 2 - APPLICANT PRIORTY ASSESSMENT

a) ARE YOU AN ACTON RESIDENT? Do you or any member of your household currently reside in Acton?

b) ARE YOU OR ANY MEMBER OF YOUR HOUSEHOLD EMPLOYED BY THE TOWN OF ACTON? Town government and all its departments, school system and water district.

c) ARE YOU A RETIRED ACTON TOWN EMPLOYEE? From any of the departments in (b) above.

d) ARE YOU THE PARENT OF A CURRENT ACTON RESIDENT? Do you have a child who resides in the town of Acton?

SECTION 3 - FINANCIAL INFORMATION

This section is intended to provide the town designee with information regarding your "Total Annual Income". Total Annual Income means all of the income earned by you and any other member of your household who will reside in the "Restricted" unit. The income you report in this section is the total amount earned **BEFORE** taxes and other deductions are subtracted from your total earnings. You must count all earnings regardless of their source (wages, salaries, tips, alimony, public assistance, etc.)

a) APPLICANT : AMOUNT & EMPLOYER SOURCE

In this subsection the applicant must report his or her amount and source of primary income. For example, if the applicant has a job and earns $25,000.00 per year and also receives a pension in the amount of $6,000.00 per year, then the applicant only reports the primary income of $25,000.00 per year in this column. The $6,000.00 pension is reported in (b) below.

The "Employer/Source" space must have the name of the employer or income source providing the primary income.

b) APPLICANT - OTHER INCOME: AMOUNT AND EMPLOYER/SOURCE

In this subsection the applicant must report all "other" income other than the primary income reported in (a) above. In the "amount" column, report only the **total** of all other income. In the Employer/Source column please list the names of all employers or other sources providing the "other income". Attach a separate sheet of paper, if necessary.

c) HOUSEHOLD - OTHER INCOME: AMOUNT

In this subsection the applicant must report all other income earned by any and all other members of the applicant's household. In the amount column report only the **total** income and do not include the income reported in (a) or (b) above.

d) TOTAL HOUSEHOLD INCOME = AMOUNT

Add the amounts listed in lines (a), (b) and (c) and report the total on this line.

SECTION 4 - CERTIFICATION

In this section the applicant is attesting to and certifying that all of the informatio reported on the Lottery Application Form is true and correct under the pains and penalties of perjury. Any misrepresentations or falsehoods found on the Lottery Application Form will be cause to disqualify the applicant from the Lottery. **ALL OF THE INFORMATION ON THE LOTTERY APPLICATION FORM WILL BE VERIFIED DURING THE MORTGAGE QUALIFICATION PROCESS.**

Memo from

APR 19 1963

525
560
525

Norman R. Veenstra

[illegible]

"On October 9, 1987, the Town of Acton by its attorney, Raymond M. Murphy [Town Counsel], executed a Release for Payment of Attorneys' Fees" and "that this document speaks for itself." The defendants have neglected to append this document to their volume of exhibits, but a copy appears attached as Exhibit M to the Amended Complaint, and as Exhibit G to Plaintiff's Interrogatories, where, at Paragraph 99, thereto, it is authenticated as a "true, accurate and genuine copy of the original . . . ." (See attached plaintiffs' exhibit to Interrogatories).

The Release For Payment of Attorneys' Fees states:

> This Release is entered into as of this 9 day of October, 1987 between the Town of Acton ("Town"), by its attorneys, and Roy C. Smith as trustee of the High Street PCRC Trust u/d/t dated March 5, 1985 ("Smith")
>
> In consideration of the execution of a certain Release Agreement regarding the right of first refusal held by the Town of Acton Conservation Commission, a certain Development Agreement, a certain Subordinated Option Agreement and a certain First Option Agreement, all dated as of the date hereof, Smith agreed to reimburse the Town for the attorneys' fees and costs it incurred in connection with litigation and settling the case Town of Acton, et al v. Veenstra, et al, Middlesex Superior Court Civil Action No. 86-6014.
>
> The Town, by its attorneys, hereby acknowledges the receipt of $28,580 from Smith in full satisfaction of Smith's obligation to reimburse the Town for such attorneys' fees and costs. In consideration of this payment of $28,580, the Town hereby releases and discharges Roy smith individually and as trustee of the High Street PCRC Trust u/d/t dated March 5, 1985 from any and all claims, demands, actions, causes of action, damages, costs suits and proceedings of any kind relating to the payment of the attorneys' fees and costs incurred by the Town in connection with the case of

documents, specifically, the Development Agreement between the Town and Smith (Exhibit A), First Option Agreement (Exhibit B), and a Subordinated Option Agreement (Exhibit C). The Commission then unanimously voted to waive its right of first refusal in the Aldred parcel on these conditions (Huber Affidavit, pp. 8-9, Exs. 8-9).

Putting aside, for the moment, the argument, which will be presented below, as to whether under M.G.L. c. 40, sec. 8C the Conservation Commission has authority to relinquish property rights; these referenced changes and waiver (which takes the form, on or about October 7, 1987, of the Release Agreement referenced above) had to have been submitted to the Selectmen after August 25, 1987 for their consideration. The above referenced Release for Payment of Attorneys' Fees must have been submitted to the Selectmen for approval subsequent to August 25 1987. Certainly, the Notice Non Exercise of Purchase Option, prepared by Richard M. Cotter, Attorney for Smith, "as a matter of good conveyancing practice", was not considered or endorsed at the August 25, 1987 meeting. Conclusively, none of the documents evidencing the deal between the Town of Acton and Smith were prepared and executed prior to October 7, 1987.

B. The Board Of Selectmen Acted Unlawfully By Failing To Meet In Public According To Chapter 39, Section 23B

The open meeting law, G.L. c. 39, sec. 23B provides that "[a]ll meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

"No quorum of a governmental body shall meet

construction of the term "joint authority" is as follows:

> Words purporting to give a joint authority to, or to direct any act by, three or more public officers or other persons shall be construed as giving such authority to, or directing such act by, a majority of such officers or persons.

Important to consider in evaluation of plaintiffs' claims "is a general rule that where a public board is required to act through votes at meetings and to keep records of its acts, the record duly kept cannot be varied or added to by other evidence." Carbone, Inc. v. Kelly, 289 Mass. 602, 605 (1935).

I PLAINTIFF'S REQUESTS FOR RELIEF IN THE NATURE OF MANDAMUS IN COUNTS II, III, AND IV SHOULD BE ALLOWED AS THEY REQUEST THIS COURT TO COMPEL GOVERNMENTAL BODIES TO EITHER PERFORM MINISTERIAL FUNCTIONS OR PROPERLY EXERCISE THEIR DISCRETIONARY FUNCTIONS

Plaintiffs contend that Defendants Board of Selectmen and Conservation Commission failed to properly perform ministerial tasks mandated by statute and covenant prior to their execution of discretionary functions. Plaintiffs do not demand that Defendants' discretion be applied in a particular fashion. Plaintiffs rather request this court to compel Defendants to enforce rights held by the Town of Acton, the exercise of which is an essential component to conduct of government.

In Count II, Plaintiffs ask the Court to void unlawful actions taken by the Defendant Selectmen, and to compel the

discretion.

In addition, Plaintiffs contend that Defendants Selectmen and Commission, whose powers are detailed in M.G.L. c.40, sec. 3, 4, 8C, and 15A, were without authority in this case to convey interests in real property or contract. The Commission, nevertheless, released its right of first refusal to the Aldred parcel by contract with Intervenor Smith; and the Selectmen waived the Town's "first refusal option to meet a bona fide offer to purchase" the Fletcher and Shapely parcels remained under M.G.L. c.60, sec.8, by similar contract with Intervenor Smith.

Count IV alleges that Defendant Assessors "failed to perform its legal duty to enforce the provisions of M.G.L. c. 61, secs.1-8, and improperly discharged liens upon the Aldred, Priest, Starbuck, Shapely and Fletcher parcels which were classified as forest land, and did not correct said error when made apparent." While Plaintiffs, at this time, concede that the Aldred, Priest and Starbuck parcels were properly discharged by Assessors, Plaintiffs vehemently disagree with defendants that the Fletcher and Shapely parcels were ever properly discharged from M.G.L. c. 60, sec.1-8. Defendant erroneously discharged the forestry liens upon these two parcels, and thereby improperly performed a ministerial act; which erroneous act the plaintiffs ask this Court to correct.

A <u>Defendants, Board Of Selectmen And Conservation Commission Failed To Properly Exercise Their</u>

AUDUBON HILL
ACTON, MASSACHUSETTS

SUMMARY INFORMATION:

Fact Sheet
Density Comparison
Fiscal Data
Utility Information
Soils
Traffic (Study by traffic consultants)

AUDUBON HILL
A SENIOR RESIDENTIAL COMMUNITY

.A proposal to provide moderately priced, secure, clustered, two-bedroom homes on one level; specifically designed and restricted to ownership and occupancy by senior couples or individuals with a minimum age requirement of fifty-five years. (Elderly is legally defined as over fifty-five years of age). The proposal conserves major portions of the land off High Street as conservation open space, owned by the Homeowner's Association.

.Town meeting approval will only apply to this specific proposal on a site that has unique physical features such as conservation land and ponds, good sun exposures, privacy and closeness to services necessary to such a development.

.The town warrant will be written to insure that the proposal as presented to and approved by the town meeting will be built as described. If not in substantial accordance with the town meeting approved plans, the Planning Board will disprove final construction plans.

.The requested density is one home per acre. The clustered units will cover less than ten (10) percent of the land and the balance will be designated conservation open space owned by the Association. The homes will be served by a central septic system. Water will be provided from an extension of the main on High Street.

.Existing zoning is one-half acre R-2 , which would allow construction of approximately one hundred twenty (120) four bedroom homes if soil conditions were adequate for individual septic systems. Based on current testing, it is estimated that at least sixty (60) four plus bedroom units could be built in a standard subdivision layout. This proposal designates most of the land as conservation open land, which will support small ponds and natural wild plantings.

.The proposal has been reviewed, modified and accepted by the Citizens Group in South Acton.

.The proposed land use distribution: Approximate acreage:

.Conservation Open space:	45.0 acres	64.3%
.Recreation open space:	.5 acres	0.7%
.Access drives, building sites and disturbed areas:	24.5 acres	35%
.TOTAL	70 acres	100%

.Residential homes proposed:
-Seventy (70) one-story homes, 1,000 to 1,200 square feet in floor area.
-The units will be built in four phases of sixteen to eighteen homes per phase, with not more than two bedrooms per home. The homes will be clustered in groups of four to eight units.
-The total number of homes shall be limited to seventy (70), containing not more than two bedrooms/dens per home and restricted to senior citizens (fifty-five years or older).
-The architectural character will be similar to a single family house, with pitched roof, articulated facade and broken roof line. The interior and [illegible] areas will be designed with elderly owners in mind. Quick response

alarm systems will be part of the design package. Enclosed one car garages that provide access into secure community areas are proposed.

-A community center will be located in the old Veenstra home and a new recreational center will be built convenient to the new units.

DENSITY COMPARISONS

1. DRUMMER BOY GREEN, Lexington, Massachusetts:
-150 dwelling units that vary in size from one to three bedrooms.
-Site totals sixty two acres, with twelve acres (20%) dedicated to open space.
-Gross density is 2.5 dwelling units per acre. Excluding the conservation land, it is 3.0 per acre net density.
-The clusters are two, three and four buildings.
-Achieves the single-family look, with pitched roofed, broken roof line and clapboards.

2. LINCOLN RIDGE, Lincoln, Massachusetts:
-58 dwelling units, varying in size from one to three bedrooms.
-The site totaled sixty three acres, with forty four acres (70%) set aside for conservation.
-The gross density was slightly less than one dwelling unit per acre, however, Lincoln permitted one dwelling unit per acre.
-Current zoning was two acre lotting.
-The fifty eight dwelling units were clustered on nineteen acres for a net density of three dwelling units per acre.

3. FORESIDE COMMONS, Falmouth, Maine:
-Sixty four dwelling units were proposed.
-The total site was thirty-three acres, and twenty two acres (66%) was set aside for conservation.
-The gross density was approximately two dwelling units per acre.
-The sixty four units were clustered on eleven acres, for a net density of six dwelling units per acre.

4. NAGOG WOODS, Acton, Massachusetts:
-Total site area of forty one and a half acres.
-Thirty eight buildings were planned containing two hundred seventy six units for an average of 7.3 dwelling units per building.
-Each dwelling unit averaged 2.6 bedrooms per unit for a total of seven hundred eighteen bedrooms.
-The gross density based on the forty one and a half acre site was 6.7 dwelling units per acre.

5. BELLOWS FARM ESTATES, Acton, Massachusetts:
-Total site area of two hundred thirty seven acres.
-Total open space/conservation area is one hundred forty two acres (60%).
-Gross density proposed is one dwelling unit per acre. The density within the developed area is two dwelling units per acre. Excluding the Homeowners' Association open space, the density would be 2.5 dwelling units per acre.
-Approximately ninety to ninety five buildings will contain the two hundred thirty seven homes, resulting in 2.5 to 2.6 homes per building.

6. AUDUBON HILL, Acton, Massachusetts:
-Total site area of seventy five acres.
-Total open space conservation is in excess of eighty (80) percent.
-Gross density is one unit per acre with seventy homes planned.
-Each dwelling will have a maximum of two (2) bedrooms.

AUDOBON HILL

SUMMARY TABLE: COMPARISON OF FISCAL BENEFITS

		STANDARD SUBDIVISION PLAN	PROPOSAL
	COSTS AND REVENUES GENERATED BY DEVELOPMENT	SINGLE FAMILY DETACHED (60 HOMES)	SINGLE FAMILY CLUSTERED (70 HOMES)
	ESTIMATED ASSESSED VALUE PER HOME	$225,000.00 (average)	$100,000.00 (average)
(1)	TOTAL ESTIMATED TAX REVENUES	$292.950.00	$151,900.00
(2)	SCHOOL COST ($3,833/UNIT)	$229,980.00	NO CHILDREN EXPECTED
(2)	NON-SCHOOL COST ($778./UNIT)	46,680.00	$54,460.00
	TOTAL ESTIMATED COST	$276,660.00	$54,460.00
	GAIN/LOSS - TOTAL	$ 16,290.00 GAIN	*(3)$97,440.00

*(1) $21.70/1000/1984 tax bill.
*(2) From Bellows Farm Estate study.
*(3) [illegible]

ASSUMPTIONS FOR FISCAL ANALYSIS

AUDUBON HILL, ACTON, MASSACHUSETTS

A. DEVELOPMENT SCENARIOS:

DEVELOPMENT TYPE	NUMBER OF HOMES	COST PER HOME	AVG. BEDROOM/DEN HOME	SCHOOL CHILDREN HOME
SINGLE FAMILY DETACHED	60	$225,000.00	4.5	1.7
SINGLE FAMILY	70	100,000.00	2. (70 two bedroom homes)	0 (elderly)

B. PROPERTY VALUATION:

Properties are valued at 100 percent with estimated tax rate of $21.70 per thousand. Source, Acton Tax Assessor, 1984 tax bills.

C. TOWN OF ACTON:

Population =19,500 approximate

School students= 4,319 approximate

Households = 6,500 approximate

UTILITY SERVICING:

A. WATER SUPPLY:
Based on the proposed program for the development, the average daily domestic water demand is estimated as follows:

1. Per bedroom	61 +/- gallons/day (based on existing facility in Acton)
2. Per home (1 bedroom and study)	122 +/- gallons/day
3. Total demand (70 homes)	8540 +/- gallons/day

Based on the proposed site development plan, number of homes, and anticipated type of construction, it is estimated that the fire flow requirements will be approximately 1,000 gallons per minute for a two-hour duration.

The site will be serviced from the existing six inch municipal line in High Street, which is fed from a sixteen inch main in Main Street (Route 27). The static water pressure in the six inch main at this location is reported to be approximately 85 psi.

Based on the initial engineering feasibility study, the existing municipal system is adequate to meet the estimated domestic and fire flow requirements for the development. It is proposed to extend an eight inch line into the site and form an eight inch looped service for internal distribution. Preliminary discussions with the Acton Water District indicates that this system will provide the desired fire flow to the project while maintaining a residule pressure of not less than 20 psi at the high elevations of the site.

B. WASTE WATER DISPOSAL:

The average daily waste water generation for the proposed development is estimated as follows:

1. Per bedroom	120 +/- gallons/day
2. Per home (1 bedroom, 1 den)	180 +/- gallons/day
3. Total demand (75 homes)	13500 +/- gallons/day

Waste water from the proposed PCRC units is anticipated to be a maximum of fifteen thousand (15,000) gallons per day. This will be collected and treated in septic tanks located within each building cluster. The septic tank effluent will then be piped to a central sewage disposal area. It is estimated that thirty thousand square feet of sewage disposal area and thirty thousand square feet of future expansion area will be required to service this facility.
An area of two to two and a half acres was tested in May of 1984 and will provide sufficient area for disposal of the waste water generated by this site.

STORM WATER MANAGEMENT:
The site is located within both the Fort Pond Brook and the Pratts Brook watersheds. There are several on-site wetlands which are tributory to both watersheds.
The most centrally located of these on site wetlands is planned to be developed as a live pond for both aesthetic and run-off control purposes. The design criteria for this and all retention areas to be constructed on the locus is to limit the post-development run-off to that which exists in

SOILS

The soils consist primarily of Paxton series soil with the exception of one area of Hollis series soil. The Soil Conservation Service descriptions follow:

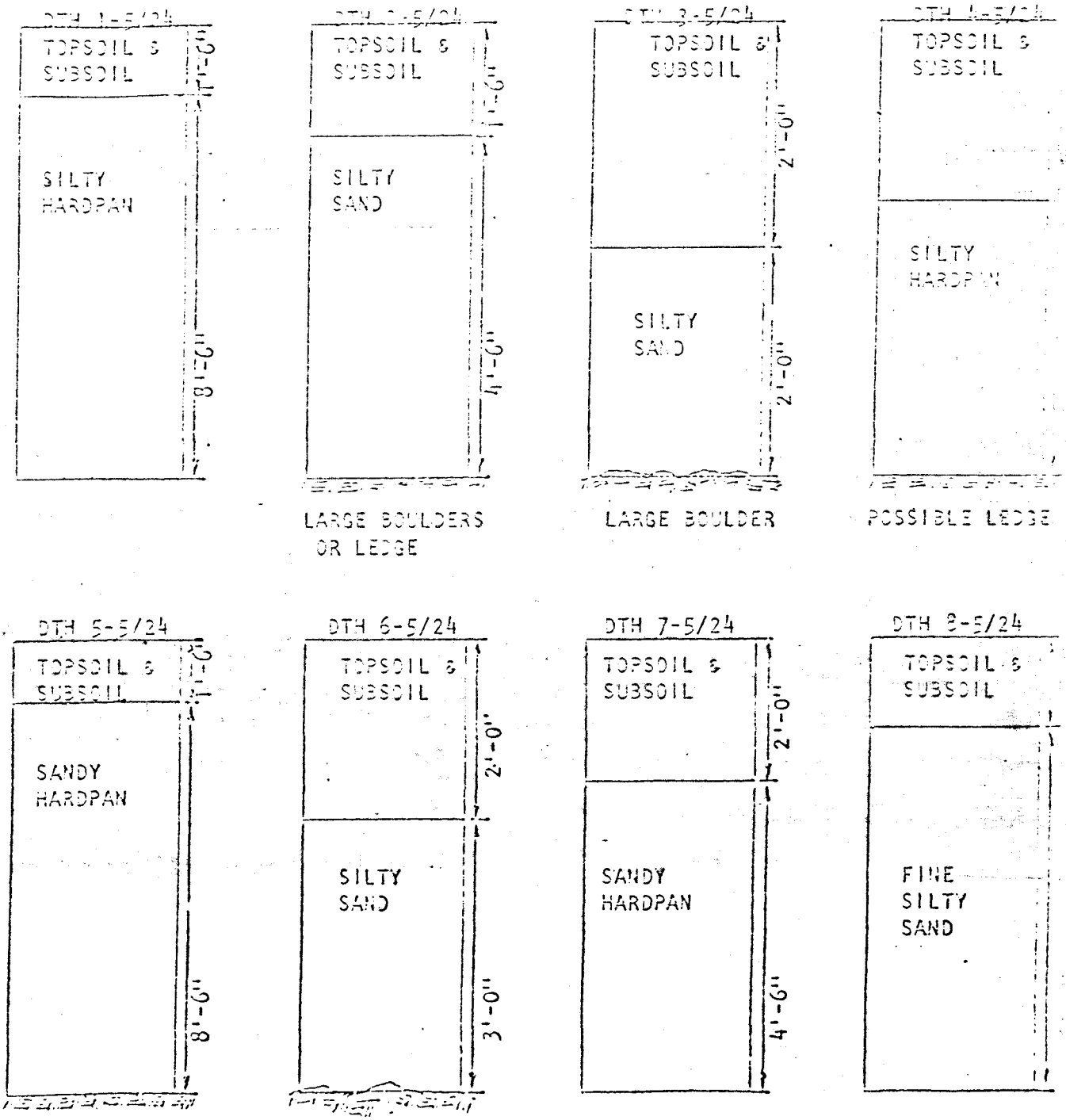
Paxton series consists of gently sloping to very steep, deep, well drained soils on drumlins. They formed in compact glacial till. Paxton soils have friable fine sandy loam surface soil and subsoil with moderate permeability over a firm or very firm fine sandy loam substratum (hardpan) at 15 to 38 inches with slow or very slow permeability. Paxton soils have a very stony or extremely stony surface, except where stones have been removed, and have stones below the surface. Major limitations are related to slow permeability in the substratum, slope and stoniness.

Hollis series consists of gently sloping the very steep, shallow, somewhat excessively drained soils on bedrock controlled uplands. They formed in a thin mantle of glacial till or residuum from local bedrock. Hollis soils have friable fine sandy loam surface soil and subsoil with moderate or moderately rapid permeability. Depth to bedrock is 10 to 20 inches. Rock outcrops are common, and many areas have stones and boulders on the surface. Major limitations are related to depth to bedrock, rockiness and slope.

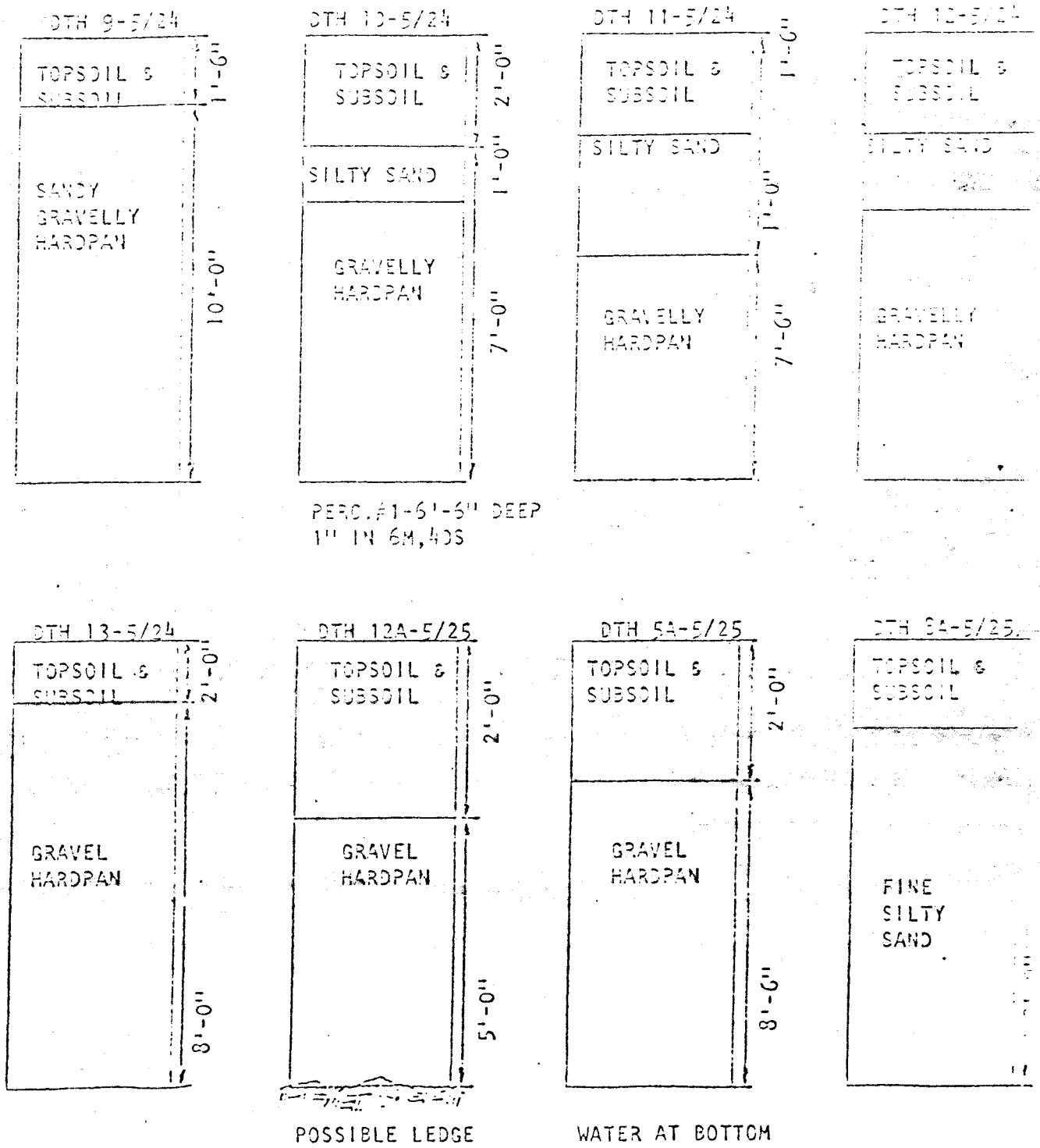
Because of the limited depth to bedrock in the Hollis series soil and an expected high spring water table in the Paxton series soil, slab on grade construction is proposed for the dwelling units. In addition, all driveway and roadway construction will be designed to follow existing contours to minimize cuts and fills.

Onsite soil exploration in May of 1984 has disclosed a two to two and a half acre area of deep gravelly soil having a fairly rapid percolation rate. This area is to be used as a central sewage disposal area. (See concept plans and attached soils log).

SOILS LOG
HIGH STREET, ACTON, VEENSTRA PROPERTY
PRELIMINARY TESTING-5/24/84; WITH B.O.H.-5/25/84

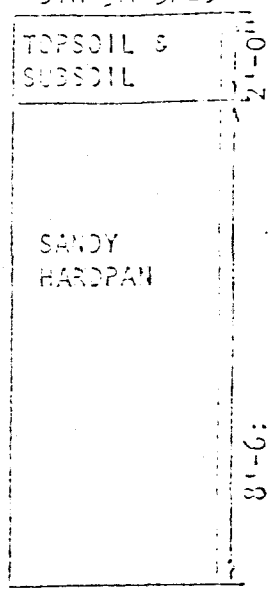


SOILS LOG
HIGH STREET, ACTON, VEENSTRA PROPERTY



SOILS LOG
HIGH STREET, ACTON, WEENSTRA PROPERTY

DTH 9A-5/25



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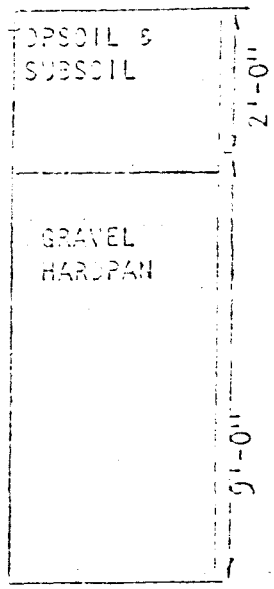

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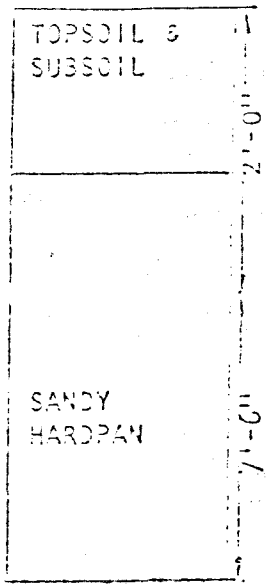
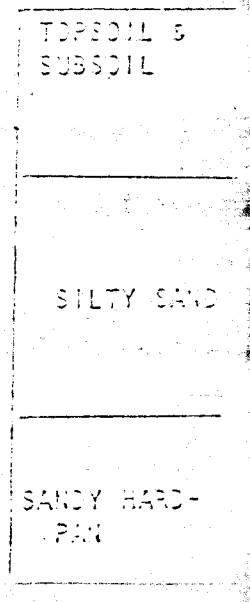


DTH 14-5/25



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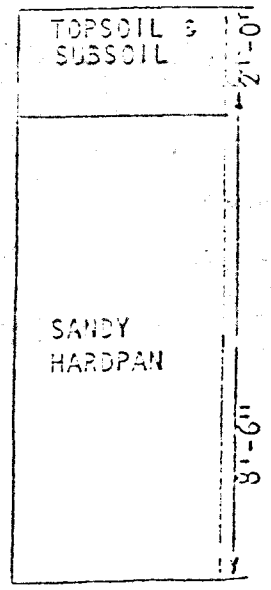
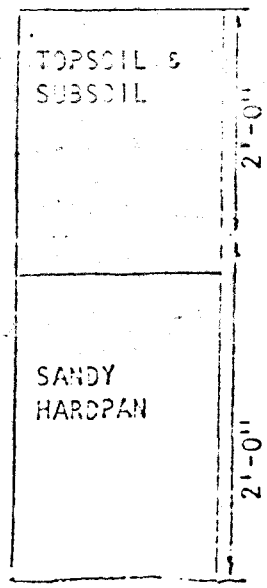
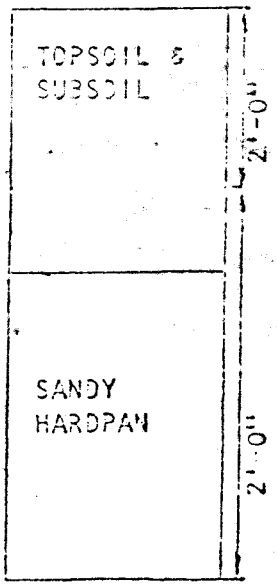
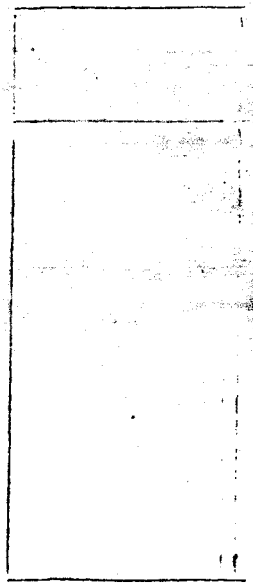


DTH 15-5/25



DTH 16-5/25





Bernard J. Murphy, Jr.
Town Manager

TOWN OF ACTON

TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 263-8200

BOARD OF SELECTMEN
DONALD R. GILBERTI, CHAIRMAN
GENA G. MANALAN, VICE-CHAIRMAN
F. DORE' HUNTER, CLERK
JOHN E. ORMSBEE
PAMELA P. RESOR

FILE COPY

December 10, 1984

Mr. Norman Veenstra
52 High Street
Acton, MA 01720

RE: FORESTRY LAND

Dear Mr. Veenstra:

The Acton Board of Selectmen acknowledges notification under Forestry Regulations, Chapter 61, that your property is being sold and hereby waives the Town's right of first refusal provided that a conservation easement and trail between Broadview Road and the adjacent Averett Conservation Land is given to the Town.

Please contact the Acton Conservation Commission and Mr. Roy Smith to work out the details and legal documents at your earliest convenience.

Sincerely,

Bernard J. Murphy, Jr.
Town Manager

DB/acs
cc: Roy Smith
Conservation Commission

TOWN OF ACTON

INTERDEPARTMENTAL COMMUNICATION

DATE: December 4, 1984

TO: Board of Selectmen

FROM: Planning Board

SUBJECT: Purchase of Veenstra Property
Map H-3, Parcel 166

Dear Members of the Board:

The above referenced parcel has been rezoned from the Residence 2 District to the PCRC (Planned Conservation Residential Community) District. This occurred at the November 27, 1984 Special Town Meeting. This parcel is intended as part of the PCRC development planned by Roy Smith for 70 units for elderly use. As a part of this rezoning, at least 60% of the PCRC will need to be set aside as "open space" precluding its further development. Therefore, the town will be getting at least 42 acres of "open space" as a result of the PCRC. This "open space" will belong to the Homeowner's Association to be formed as part of the PCRC. Nevertheless, the "open space" will be perpetually restricted against future development.

In addition, the land in question is not contiguous to any existing town owned land and it is not in any aquifer area. Ordinarily these are two criteria which normally should be met in order to qualify land for purchase as conservation land.

The Planning Board does not recommend the purchase of this parcel of land.

If you should have any further questions regarding this matter please feel free to contact me.

Sincerely,

Armand J. Dufresne

Armand J. Dufresne
Town Planner

AJD:mw
cc: PB
file

TOWN OF ACTON

INTERDEPARTMENTAL COMMUNICATION

DATE: November 19, 1984

TO: Board of Selectmen

FROM: Conservation Commission

SUBJECT: Veenstra Property

By a certified mail letter dated November 2, 1984, Mr. Norman Veenstra offered a parcel of land off High Street containing approximately 23 acres (Registry of Deeds Book 11684 Page 362-369) as per the deed agreement between Mr. Veenstra and the former owner, the Audubon Society.

The Commission voted to waive their right of first refusal. The parcel is land-locked and is essential to a project involving several parcels; as such the cost is prohibitive.

However, the project is adjacent to the Averett Conservation Land and the Commission is interested in a conservation easement to provide a trail between Broadview Road and the Averett Conservation Land. This has been agreed to by Mr. Roy Smith, the purchaser, with the exact details to be determined at a later date (see attached).

The Conservation Commission hereby advises the Board of Selectmen that they have no interest in the Audubon Hill property with the exception of the proposed conservation easement.

Lynn Abbott
Conservation Assistant

LA:mw
cc:file

CHARLES G. KADISON, JR.
ATTORNEY AT LAW
179 GREAT ROAD
ACTON, MASSACHUSETTS 01720

CHARLES G. KADISON, JR.
EDMUND C. GRANT

ACTON - (617) 264-4886
LEXINGTON - (617) 861-6662

November 2, 1984

Acton Conservation Commission
DPW Building
Forest Street
Acton, MA 01720

Re: Norman Veenstra/Property off High Street, Acton

Dear Members:

Enclosed please find a Waiver of Right of Refusal which we request be signed by a majority of the members of the commission to permit the sale of Mr. Veenstra's land to Roy C. Smith for his proposed housing development.

Mr. Smith has authorized me to represent to you that he has no objection to granting a walking trail easement through the property at a location to be agreed upon provided said easement is acceptable to the governmental boards and agencies responsible for the approval of Mr. Smith's proposed housing development.

Very truly yours,

Charles G. Kadison, Jr.

CGK:clg
Enclosure
cc: Roy C. Smith
Norman Veenstra

I hereby acknowledge the above representation.

Roy C. Smith

TOWN OF ACTON

Inter-Departmental Communication

DATE: Oct. 29, 1984

TO: Bernard J. Murphy, Town Manager

FROM: David W. Bolton, Assistant Assessor

SUBJECT: Forestry Land & Agricultural Land as per your 2 memo's of October 24, 1984

1. Forestry Land, Norman Veenstra

It does not appear that Mr. Veenstra has properly notified the Town of his intent to sell. See attached photo copy of Chapter 61, Section 8, the law is specific about notification.

There also is a question as to which parcels Mr. Veenstra can withdraw from Chapter 61 without rollback taxes, which I am attempting to resolve with the State Division of Forests and Parks.

Mr Veenstra has not chosen to state the sale price in his letter to Pam Resor. This of course is necessary if the Town should choose to purchase the property.

I respectfully suggest that the Town not waive its right of first refusal until the above issues are resolved. I shall attempt to resolve everything with Mr. Veenstra and the State prior to November 8, 1984.

2. Agricultural/Horticultural, Ethel Cook Land

It appears that notification to the applicable town boards was sufficient in this case. See attached photocopy of Chapter 61A, Section 14. A conveyance tax will be imposed upon sale. The range by price per acre that the Conservation Commission typically pays is $1,500 to $2,000 per acre. If the Town chooses to purchase this land it will not be allowing this parcel to return to the tax rolls under Chapter 59 (full value assessments).

Note to David [illegible] info ASAP

11/14 Done.

5059A

come due and payable at the time when said land is removed from classification.

[¶ 90-956]

Sec. 6. [Penalty.] An owner of classified forest land, who received the notice provided in section three, fails to make return, shall be subject to a penalty of five dollars a day during the period of delinquency but the assessors may, for cause, abate such penalty in whole or in part; provided, that such penalty shall in no case exceed the amount of the products tax assessed under section three. Penalties assessed hereunder shall be added to the tax, and shall bear interest and be collected as a part of the tax.

[¶ 90-957]

Sec. 7. [Withdrawal from assessment as forest land.] When the owner of classified land withdraws such land or any part thereof from classification, or upon a final determination that said land should be withdrawn from classification, he shall pay to the city or town a withdrawal penalty tax equal to the difference between the amount of taxes which would have been paid under chapter fifty-nine and the sum of the products tax established by section three of this chapter and the land taxes paid from the last prior certification under the provisions of this chapter, or from the immediately preceding five years, whichever period is the longer. There shall be added to the tax due, under this chapter, for each taxable year, an amount of interest determined at the rate as is established under section thirty-two of chapter sixty-two C. When said voluntary withdrawal occurs at the end of a completed certification period, credit against the withdrawal penalty tax shall be given for any tax payments made under the provisions of this chapter during the said certification period. No such credit for products tax shall be given if the land is withdrawn upon a final determination that the land was not properly classified or managed under a forest management plan, or if said land is withdrawn voluntarily by the owner at a time other than the end of the certification period.

[¶ 90-958]

Sec. 8. [Sale or conversion of land.] Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed unless the city or town in which such land is located has been notified of the intent to sell for, or so convert to, such other use; provided, however, that the discontinuance of forest certification shall not, in itself, be deemed a conversion. Specific use of land for a residence for the owner or the parent, grandparent, child, grandchild, or brother or sister of the owner, or the surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full time in the forest use of such land, shall not be deemed to be a conversion for purposes of this section and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that a particular use is such a use. For a period of sixty days subsequent to such notification, said city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase said land, or, in the case of intended conversion not involving sale, an option to purchase said land at full and fair market value to be determined by impartial appraisal. Such notice of intent shall be sent by the landowner by certified mail to the mayor and city council of a city, or to the board of selectmen of a town, to its board of assessors and to its planning board and conservation commission, if any, and said option period shall run from the day following the latest date of deposit of any such notices in the United States mail. No sale or conversion of such land shall be consummated unless and until either said option period shall have expired or the landowner shall have been notified in writing by the mayor or board of selectmen of the city or town in question that said option will not be exercised. Such option may be exercised only by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds, within the option period. An affidavit before a notary public that he has so mailed such notice of intent on behalf of a landowner shall conclusively establish the manner and time of the giving of such notice; and such an affidavit, and such a notice that the option will not be exercised, shall be recorded with the registry of deeds. Each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises so to be sold or converted adequate for

identification thereof; and each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates. Such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of the town or city clerk; and in the case of notice to a city council or board or commission, addressed to it as such entity. The provisions of this section shall not be applicable with respect to a mortgage foreclosure sale, but the holder of a mortgage shall, at least forty-five days before a foreclosure sale, send written notice of the time and place of such sale to the parties and in the manner above provided in this section for notice of intent to sell or convert, and the giving of such notice may be established by an affidavit as above set forth.

CHAPTER 61A

ASSESSMENT OF AGRICULTURAL OR HORTICULTURAL LAND

[¶ 90-967]

Sec. 1.—[Definition—agricultural use.] Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market. (*As added by Ch.* 1118, *Acts* 1973, *effective December* 4, 1973, *and applicable for fiscal years ending June* 30, 1975 *and thereafter.*) [Comp. ¶ 20-359b.]

[¶ 90-968]

Sec. 2. [Definition—horticultural use.] Land shall be deemed to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market. (*As added by Ch.* 1118, *Acts* 1973; *as amended by Ch.* 794, *Acts* 1975, *effective March* 19, 1976.) [Comp. ¶ 20-359b.]

[¶ 90-969]

Sec. 3. [Gross sales.] Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural products resulting from such uses together with the amount, if any, payable under a soil conservation or pollution abatement program of the federal government or the commonwealth total not less than five hundred dollars per year or when the use of such land is clearly proven to be for the purpose of achieving an annual total of not less than five hundred dollars from such gross sales and program payments within the normal product development period as determined by the farmland valuation advisory commission established pursuant to section eleven of this chapter. In cases where the land is more than five acres in area, the gross sales and program payment standard above set forth shall be increased at the rate of five dollars per acre except in the case of woodland or wetland for which such increase shall be at the rate of fifty cents per acre. (*As added by Ch.* 1118, *Acts* 1973, *effective December* 4, 1973, *and applicable for fiscal years ending June* 30, 1975 *and thereafter.*) [Comp. ¶ 20-359b.]

[¶ 90-970]

Sec. 4. [Valuation.] For general property tax purposes, the value of land, not less than five acres in area, which is actively devoted to agricultural, horticultural or agricultural and horticultural uses during the tax year in issue and has been so devoted for at least the two immediately preceding tax years, shall, upon application of the owner of such land and approval thereof, be that value which such land has for agricultural or horticultural purposes. For the said tax purposes, land so devoted

[The next page is 159.]

fer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. Any land in agricultural or horticultural use which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its acquisition by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property. If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption therefrom shall apply to such taxes, so far as the same are applicable. (*As added by Ch.* 1118, *Acts* 1973; *as amended by Ch.* 794, *Acts* 1975, *effective March* 19, 1976.) [Comp. ¶ 20-359b.]

[¶ 90-977c]

Sec. 13. **[Roll-back taxes.]** Whenever land which is valued, assessed and taxed under this chapter no longer qualifies as actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in the current tax year in which it is disqualified and in such of the four immediately preceding tax years in which the land was so valued, assessed and taxed; provided that such roll-back taxes shall not be applicable unless the amount thereof as computed pursuant to this section, exceeds the amount, if any, imposed under the provisions of section twelve and, in such case, the land shall not be subject to the conveyance tax imposed under said section twelve; and provided, further, that no roll-back taxes shall be applicable if the land involved is purchased for a public purpose by the city or town in which it is situated. For each year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable in accordance with the provisions of this chapter and the taxes that would have been paid or payable had the land been valued, assessed and taxed without regard to such provisions. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the five immediately preceding years in which the land was valued, assessed and taxed thereunder. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(*a*) The full and fair value of such land under the valuation standard applicable to other land in the city or town;

(*b*) The amount of the land assessment for the particular tax year;

(*c*) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (*a*); and,

(*d*) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (*c*) by the general property tax rate of the city or town applicable for that tax year. (*As added by Ch.* 1118, *Acts* 1973; *as amended by Ch.* 794, *Acts* 1975, *effective March* 19, 1976.) [Comp. ¶ 20-359b.]

Cook

[¶ 90-977d]

Sec. 14. **[Conversion of use.]** Land which is valued, assessed and taxed on the basis of its agricultural or horticultural use under an application filed and approved pursuant to this chapter shall not be sold for or converted to residential, industrial or commercial use while so valued, assessed and taxed unless the city or town in which such land is located has been notified of intent to sell for or convert to such other use; provided, however, that the discontinuance of the use of such land for agricultural or horticultural purposes shall not be deemed a conversion. Specific use of land for a residence for the owner or a parent, grandparent, child, grandchild, or brother or sister of the owner, or the surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full time in the agricultural or horticultural use of such land, shall not be deemed to be a conversion for purposes of this section; and a certificate of the board of assessors, recorded with the registry of deeds, shall

conclusively establish that a particular use is such a use. For a period of sixty days subsequent to such notification, said city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase said land, or, in the case of intended conversion not involving sale, an option to purchase said land at full and fair market value to be determined by impartial appraisal. Such notice of intent shall be sent by the landowner via certified mail to the mayor and city council of a city, or to the board of selectmen of a town, to its board of assessors and to its planning board and conservation commission, if any, and said option period shall run from the day following the latest date of deposit of any of such notices in the United States mails. No sale or conversion of such land shall be consummated unless and until either said option period shall have expired or the landowner shall have been notified in writing by the mayor or board of selectmen of the city or town in question that said option will not be exercised. Such option may be exercised only by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds, within the option period. An affidavit by a notary public that he has so mailed such a notice of intent on behalf of a landowner shall conclusively establish the manner and time of the giving of such notice; and such an affidavit, and such a notice that the option will not be exercised, shall be recorded with the registry of deeds. Each such notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and a description of the premises so to be sold or converted adequate for identification thereof; and each such affidavit by a notary public shall have attached to it a copy of the notice of intention to which it relates. Such notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of the town or city clerk; and in the case of notice to a city council or a board or commission, addressed to it as such entity. The provisions of this section shall not be applicable with respect to a mortgage foreclosure sale; but the holder of a mortgage shall, at least forty-five days before a foreclosure sale, send written notice of the time and place of such sale to the parties and in the manner above provided in this section for notice of intent to sell or convert, and the giving of such notice may be established by an affidavit of a notary public as above set forth. (*As added by Ch.* 1118, *Acts* 1973; *as amended by Ch.* 794, *Acts* 1975, *effective March* 19, 1976.) [Comp. ¶ 20-359b.]

[¶ 90-977e]

Sec. 15. **[Standard of assessment.]** All buildings located on land which is valued, assessed and taxed on the basis of its agricultural or horticultural uses in accordance with the provisions of this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property. (*As added by Ch.* 1118, *Acts* 1973, *effective December* 4, 1973, *and applicable for fiscal years ending June* 30, 1975 *and thereafter.*) [Comp. ¶ 20-359b.]

[¶ 90-977f]

Sec. 16. **[Continuance of valuation.]** Continuance of land valuation, assessment and taxation under the provisions of this chapter shall depend upon continuance of such land in agricultural or horticultural uses and compliance with other requirements of this chapter and not upon continuance in the same owner of title to such land. Liability to roll-back taxes, determined pursuant to section thirteen, shall attach when such land no longer qualifies as actively devoted to agricultural or horticultural use and shall be the obligation of the then owner of the land. For purposes relating to roll-back taxes such qualification shall depend on the actual use of such land, and not on the filing of application under section six for any year. (*As added by Ch.* 1118, *Acts* 1973; *as amended by Ch.* 794, *Acts* 1975, *effective March* 19, 1976.) [Comp. ¶ 20-359b.]

[¶ 90-977g]

Sec. 17. **[Partial discontinuance of use.]** If, by conveyance or other action of the owner thereof, a portion of land which is valued, assessed and taxed under the provisions of this chapter is separated for a use other than agricultural or horticultural, the land so separated shall be subject to liability for conveyance or roll-back taxes applicable thereto, but such separation shall not impair the right of the remainder of such land to continuance of valuation, assessment and taxation thereunder; provided, that such remaining land continues to qualify under the usage, minimum acreage and other provisions thereof. (*As added by Ch.* 1118, *Acts* 1973, *effective December* 4, 1973, *and applicable for fiscal years ending June* 30, 1975 *and thereafter.*) [Comp. ¶ 20-359b.]

FILE COPY

TOWN OF ACTON

Inter-Departmental Communication

(12)

DATE: Oct. 24, 1984

TO: David Bolton, Assistant Assessor; Conservation and Recreation

FROM: Bernard J. Murphy, Town Manager

SUBJECT: FORESTRY LAND

Attached please find letter from Norman Veenstra requesting a letter that we are not interested in buying various parcels of land under Chapter 61, as listed. The Selectmen would like your input on this before November 8th in order that they may make a decision at their meeting of November 13th.

Thank You.

acs

TOWN OF ACTON

Inter-Departmental Communication

DATE: November 5, 1984

TO: Bernard J. Murphy, Town Manager

FROM: Thomas M. Haggerty, Recreation Director

SUBJECT: Veenstra Property

The Recreation Commission has no interest in purchasing the parcels listed in the attached letter.

Thomas M. Haggerty

Thomas M. Haggerty

Bernard J. Murphy, Jr.
Town Manager

TOWN OF ACTON

TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 263-8200

BOARD OF SELECTMEN
DONALD R. GILBERTI, CHAIRMAN
GENA G. MANALAN, VICE-CHAIRMAN
F. DORE' HUNTER, CLERK
JOHN E. ORMSBEE
PAMELA P. RESOR

October 24, 1984

Mr. Norman R. Veenstra
52 High Street
Acton, MA 01720

Dear Mr. Veenstra:

Enclosed please find copy of memo which has been sent to the Assessors, Recreation Commission and Conservation Commission for their input. This is the Selectmen's customary procedure, and therefore we cannot put this on the agenda for the October 30th meeting. The Board will be discussing your request at the meeting of November 13th.

Very truly yours,

Ann Simeone
Selectmen's Secretary

Memo from

Norman R. Veenstra October 19,1984

Dear Pamela,

Finally after many years of trying to unload my land (you may recall our talking about my land in the past), we are ready to sign a Purchase agreement with Roy Smith, who will erect elderly housing, etc., The various parcels I own are all contiguous and are all under the Forestry arrangement. So before we can sign the agreement, we need as soon as possible a simple letter from the selectmen that they are not interested in buying the parcel, since under Forestry, we must offer 1st refusal to the Town.
I will appreciate your getting a simple letter issued at your next meeting to the effect" At the present time ~~the~~ we are not interested in buying from you the various parcels listed in the Tax records as " 24, 26, 28, 52 and Parker Street rear No. 97", total parcel approx 65 acres with two homes thereon."etc.,

I am most grateful

Norman

Norman

TOWN OF ACTON

(12)

Inter-Departmental Communication

DATE: Oct. 24, 1984

TO: David Bolton, Assistant Assessor; Conservation and Recreation

FROM: Bernard J. Murphy, Town Manager

SUBJECT: FORESTRY LAND

Attached please find letter from Norman Veenstra requesting a letter that we are not interested in buying various parcels of land under Chapter 61, as listed. The Selectmen would like your input on this before November 8th in order that they may make a decision at their meeting of November 13th.

Thank You.

acs

NORMAN R. VEENSTRA
Realtor - Mortgages
52 High Street
Acton, Mass. 01720

TOWN OF ACTON

Inter-Departmental Communication

DATE: December 3, 1984

TO: Bernie Murphy

FROM: Dave Bolton DJB

SUBJECT: Norman Veenstra, Chapter 61, Forestry

Notification of intent to sell now appears in proper form.

The Assessors would like to see this parcel returned to the tax rolls under Chapter 59.

If the Selectmen do not wish to exercise their right of first refusal, I would concure, and calculate the applicable roll-back tax for Mr. Veenstra.

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

CONFIDENTIAL

CONFIDENTIAL

March 27, 1987

TO: Don Johnson, Town Manager

FROM: Doug Halley, Conservation Administrator D.H

SUBJECT: Veenstra Property

On March 26th I met with Paul Feinberg and Steven Tise regarding the Town's right of first refusal on the Aldred parcel. Mr. Feinberg and Mr. Tise expressed an interest in resolving the problem through negotiations rather than through further lawsiuts. At the end of the meeting it was clear to both sides that there are two courses of action that can be taken to resolve this matter.

The first and most simplistic resolution would be for the Town and Feinberg-Tise to agree upon a value of the Aldred parcel. This value would be established in relation to the original $525,000 selling price of the entire property and the importance of the value of the Aldred parcel, in development terms, in relationship to the other three parcels. The Town should assume that Feinberg-Tise will assert that the Aldred parcel is by far the most valuable portion of property. This agrument has some validity in terms of the possible development of the property. The Aldred parcel is mostly high ground with only a limited amount of wetlands. In addition, it is the central piece separating one smaller parcel from the rest of the Veenstra land. The existing house where Dr. Logan resides also has value that Feinberg-Tise will use as an argument that the Town pay the major share of the purchase price.

The Town has some persuasive arguments as to the non-value of the Aldred parcel. The land is not percable and is not intended to be developed by the Town. There is no frontage on High Street and at present no legal easements for access. The house, while in fair shape, does not come close to the value of the Veenstra house. Without legal access to the land the Town could not sell, rent or lease the Logan house. Without legal frontage the Town could not sell without selling the entire Aldred parcel. The inability to obtain legal access or legal frontage would make the house worthless and a detriment to the property as it would have to be torn down.

The Town is not without options concerning access and frontage. It is clear that the Logan house would have an easement by implication across the Veenstra land that Feinberg-Tise would purchase. Basically the law states that a landowner would not willingly give away his right to access his property, and past court decisions indicate the Town would be upheld by that assertion. The Town would also be well within its rights to claim adverse possession of the land that the driveway is on. Affadavits from past owners of the property, or physical evidence of the existence of the drive for more than 20 years would be needed for the Town to claim adverse possession.

It would be crucial for the Town in this process to submit a persuasive argument to the land court that a 50' strip would be necessary for the Town to have. This argument could be based on the Planning Boards existing regulations that allow at a minimum 50' of frontage, and a 50' wide strip of land leading to the house for health and safety reasons. Only with this claim could the Town sell the Logan house while retaining the majority of the Aldred parcel.

There are two alternatives to the straight offer for the Aldred parcel. The first alternative would be for the Town to relinquish a portion of the eastern part of the Aldred parcel in exchange for the property between the Aldred parcel and High Street. This may not be a good alternative because Feinberg-Tise would be able to strengthen their arguments as to the value of the Aldred parcel, and the Town will only gain what may be its right under adverse possession proceedings. The second alternative would be for the Town to relinquish its rights on the entire Aldred parcel in exchange for a similar acreage of land abutting Pratt's Brook and running out to High Street. This swap would lower the cost of the land to the Town while providing a connector to existing conservation land, and also providing adequate access to the property. This may be the most acceptable alternative to Feinberg-Tise.

The second and more difficult resolution to the problem would be for the Town to work closely with Feinberg-Tise on a development proposal. This is by far the preferred action by Feinberg-Tise. They would propose to create a development similar to the one proposed by Roy Smith. The development would be for the elderly with 25% to 40% of the units dedicated to low income or affordable housing. In addition, 50% of the property would be dedicated to conservation.

The key problem to this resolution is the inability of any of the property in question to perc with enough success to guarantee that more than six or eight units could be built on the property. Feinberg-Tise see their problem in one of two ways. The first would be for the Town to approach Roy Smith and persuade him to become part of the development team by placing his 18 acre parcel of land into the development. Mr. Smith's land is the only known area of land that could support a P.C.R.C. concept on the Veenstra land. Feinberg-Tise would of course pay the price for the inclusion of Mr. Smith's land into the development. Up to this time Mr. Smith has indicated he would not enter into this development under any terms, and I believe that the Town would be unable to convince him otherwise. The second alternative would be for the Town to expand its sewer district to include the Veenstra land. Feinberg-Tise are willing to seek funding for an extension of the sewer system to there land as well as assistance for the rest of the sewer system. For the Selectmen to support that concept it would require a change of the Selectmen's previously stated position that the sewer district was created to resolve septic problems and not to create a new development. If either of these alternatives are examined by the Town it can be assured that heavy opposition would come from the High Street residents and possibly from a large vocal portion of South Acton. Justification for purchase of the Veenstra land came partly from traffic issues at the last Town Meeting. Obviously if the Selectmen backed a development proposal for this land it would be at an expense of increased traffic with the expected benefit being low income or affordable housing. On those terms, it would seem the Selectmen would have to insist on 40% low income or affordable housing.

These are the courses of action and the alternatives as I see them after meeting with Mr. Feinberg and Mr. Tise. I am prepared to continue to negotiate with Feinberg-Tise, or to arrange a meeting with the Selectmen if they wish to deal with Feinberg-Tise directly. In addition, I am prepared to arrange a meeting with Mr. Smith if the Selectmen feel that is a viable option, or to have Feinberg-Tise meet with Jane Mahony and Betty McManus if the Selectmen believe that low income and affordable housing should be pursued. I await for your instructions.

DH:am

0677C

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

* * CONFIDENTIAL * *

RECEIVED
APR - 2 1987

April 1, 1987

TO: Don Johnson, Town Manager

FROM: Doug Halley, Conservation Administrator

SUBJECT: Veenstra Land

Enclosed with this memo are sketches of the three alternatives to the first resolution of the right of first refusal problem on the Veenstra property. These alternatives were outlined in my memo of March 27, 1987. It is my intention to bring these alternatives to Paul Feinberg and Stephen Tise to see if one would be acceptable to them. As was discussed at the Selectmen's Meeting, the third alternative as shown on the sketches will be the Town's preferred alternative. It is my opinion that this alternative would provide more benefits to the Town, and yet should have a lower selling price than the other two alternatives. Please notify me should you or the Selectmen have any questions regarding the three alternatives.

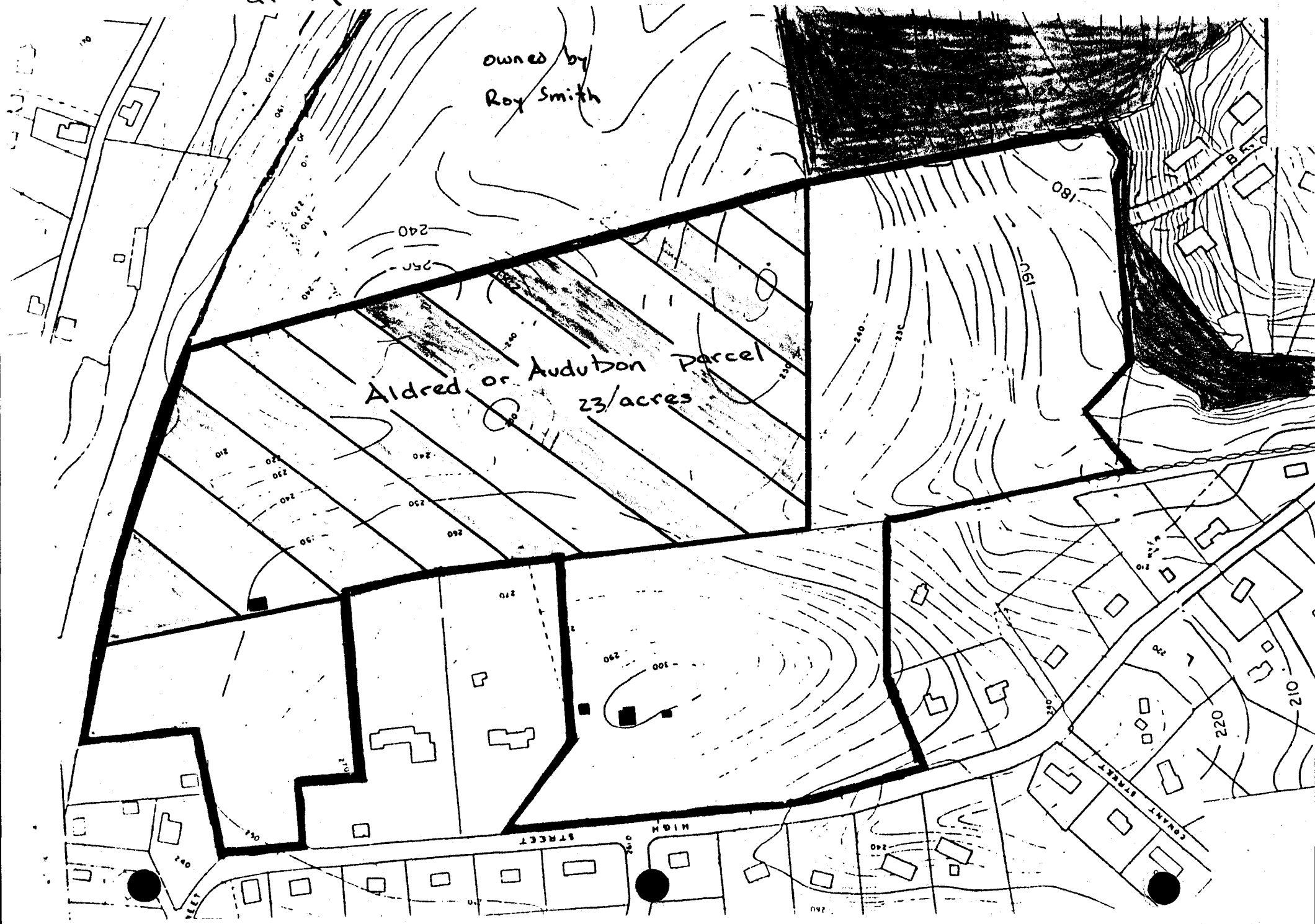
cc BOS CONFIDENTIAL

DH:am

0691C

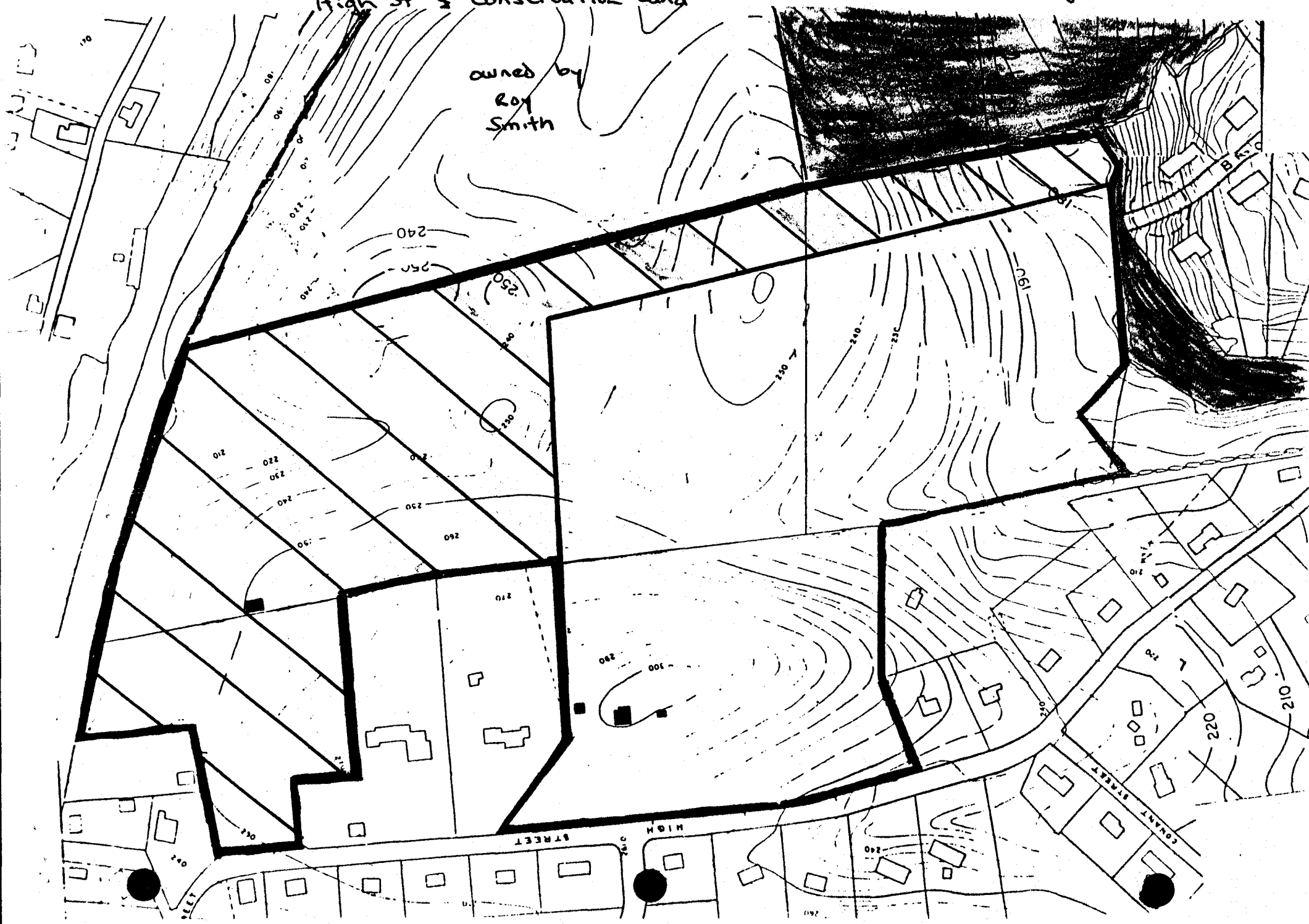
Alternative 1

Town is offered Aldred parcel separetly from other parcels at a price consistent with the offer for all the parcels



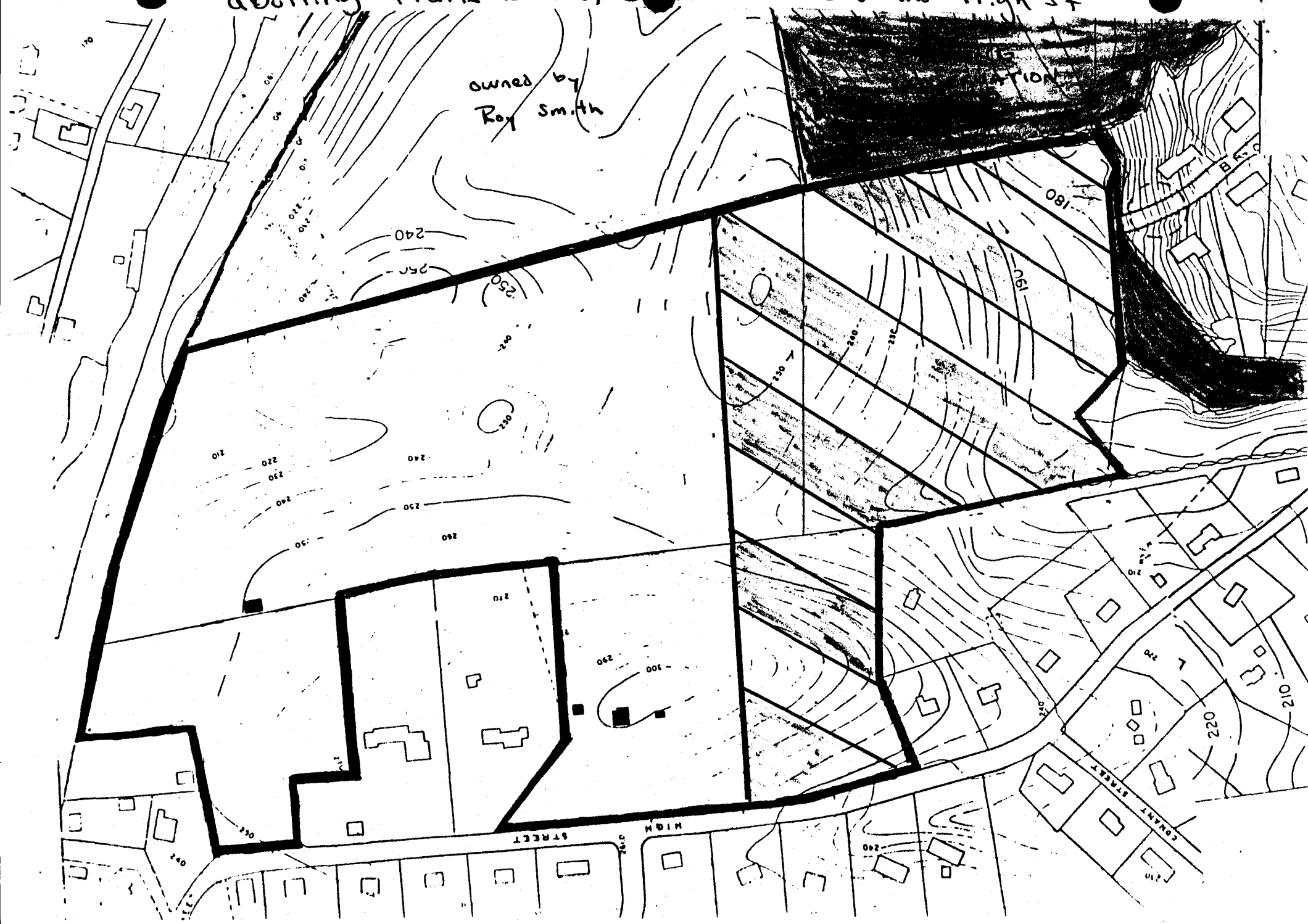
Alternative 2

Town is offered majority of Aldred parcel
The Town releases a portion in exchange for land abutting
High St & Conservation Land



Alternative 3

Town releases the Aldred parcel in exchange for land abutting Pratt's Brook, Conservation Land and High St



PRESS

BYLAWS OF

AUDUBON HILL SOUTH CONDOMINIUM ASSOCIATION, INC.

ARTICLE I - DEFINITIONS

All terms and expressions herein used which are defined in Chapter 183A, Section 1, of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context indicates otherwise. Further, the additional terms defined in this Article shall, for all purposes of these By-Laws, have the meaning herein specified.

Articles of the Association shall refer to the Articles of Organization of Audubon Hill South Condominium Association Inc., (hereinafter referred to as the "Association") which are filed in the office of the Secretary of The Commonwealth of Massachusetts, a true copy of which is on file at the principal office of the Association, together with such amendments to the Articles of the Association as may from time to time be properly made.

Association shall mean Audubon Hill South Condominium Association, Inc., and shall have the same meaning as "Organization of Unit Owners" as defined in Chapter 183A, Section 1, of the General Laws of Massachusetts, i.e., "the...association owned by the unit owners and used by them to manage and regulate the condominium."

(04/13/88; 05/09/88; 07/26/88)

Board of Governors shall mean the Board of Directors of the Association.

By-Laws of the Association shall mean the By-Laws of Audubon Hill Condominium Association, Inc., as they may be amended from time to time, pursuant to the provisions contained in said By-Laws.

Condominium shall mean Audubon Hill South Condominium.

Audubon Hill South Condominium Master Deed - See Master Deed.

Audubon Hill South Condominium shall mean the premises to be submitted to the provisions of Chapter 183A of the General Laws of Massachusetts ~~as a condominium by the Master~~ Deed to be recorded and any amendments thereto duly adopted and recorded.

Declarant shall refer to Roy C. Smith, Trustee of High Street PCRC Trust, his successors and assigns.

Fiscal Year shall mean the calendar year, unless changed or modified by the Board of Governors.

Gender shall in the By-Laws of the Association not only refer to the masculine but also to the feminine and neuter gender, and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

Master Deed shall mean the instrument by which Audubon Hill South Condominium shall be submitted to the provisions of Chapter 183A of the General Laws of Massachusetts.

Members of the Association shall mean any person, corporation, partnership, joint venture or other legal entity which is a member of

the Association as defined in the By-Laws of the Association, the Articles of the Association and the Master Deed.

Organization of Unit Owners - See Association.

Owner - See Unit Owner.

Person shall mean an individual, corporation, unincorporated association, partnership, joint venture, trustee, conservator or administrator.

Property shall mean all the land and the common area, buildings and improvements located in the Audubon Hill South Condominium.

Restrictions shall mean any restrictions contained in the Master Deed and the By-Laws of the Association.

Rules and Regulations of the Association shall mean the Audubon Hill South Condominium Rules and Regulations as may be adopted by the Board of Governors pursuant to the provisions of the Master Deed and the By-Laws of the Association, as they may be amended from time to time.

Unit Owner shall mean the owner of said unit.

ARTICLE II - GENERAL

Section 1 - The Condominium

The Condominium is located on a parcel of land situated in Acton, Massachusetts, more particularly described in the Master Deed recorded with the Middlesex South District Registry of Deeds, and shown on the plans filed with said Master Deed entitled, "Audubon Hill South Condominium" dated , 1988, to be recorded,

said plans being the Condominium Plans hereafter referred to.

Section 2 - The Association

Audubon Hill South Condominium Association, Inc., (the "Association") has been organized to perform the functions set forth in Section 10 of said Chapter 183A and described in the By-Laws of the Association, except for those to be performed by others as set forth in the By-Laws of the Association or the Master Deed. The Association is charged with the duties and has the power prescribed by law and set forth in the Master Deed, the Articles of the Association and the By-Laws of the Association, as they may be amended from time to time. Neither the Articles of the Association nor the By-Laws of the Association shall, for any reason, be changed or interpreted so as to be inconsistent with the Master Deed.

The Association is an organization owned by the Unit Owners of the Audubon Hill South Condominium and used by them to manage and regulate the Condominium. Each Unit Owner, upon becoming a Unit Owner, shall be deemed a Member of the Association. As a member of the Association, the rights, duties, privileges, immunities and liabilities of being a Unit Owner shall be those set forth in and shall be exercised in accordance with the Master Deed, the Articles of the Association, the By-Laws of the Association and the Rules and Regulations of the Association as the foregoing may be adopted or amended by the Association or by the Board of Governors, as provided therein.

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon transfer of title of a Unit and then only to the transferee of title, except in the instance of suspension of membership as provided hereunder. Any attempt to make a prohibited transfer shall be null and void.

Section 3 - Provisions of By-Laws Applicable

The provisions of the By-Laws of the Association are applicable to the Condominium and to the use and occupancy thereof. The provisions of the By-Laws of the Association shall automatically become applicable to any property which may be added to the Condominium by act of the Declarant, its successors or assigns, or of the Association.

Section 4 - By-Laws Applicable to Present and Future Owners

All present and future owners, mortgagees, lessees and occupants of Units and their employees and any other person(s) who may use the facilities of the Condominium in any manner are subject to the By-Laws of the Association, the Rules and Regulations of the Association, the restrictions contained in the Master Deed and the Articles of the Association. Accepting a deed to a Unit, taking conveyance of a Unit, entering into a lease for use of a Unit or the act of occupying a Unit shall constitute an agreement that all of the above documents, restrictions and conditions, as they may be amended from time to time, are accepted, ratified and shall be complied with.

Section 5 - Office of the Association

The office of the Association and of the Board of Governors shall be located at the Condominium or at some other location within the Commonwealth, as may be selected from time to time by the Board of Governors and of which the Unit Owners and listed mortgagees have been given written notice.

Section 6 - Certificates of Membership

The Board of Governors may provide for the issuance of certificates of membership in the Association in a form which it shall determine. One such certificate shall be issued for each Unit and shall contain the name and address of the member or members who own such Unit, the Unit designation, its location and the beneficial interest appurtenant to said Unit. The date of issuance shall be entered in the records of the Association by the Clerk.

Section 7 - Documents Available for Review

Copies of the By-Laws of the Association, the Articles of the Association, the Rules and Regulations of the Association and the Master Deed, as they may be adopted or amended from time to time, shall be available for inspection by Unit Owners and their authorized agent during reasonable hours.

Section 8 - Termination

The Unit Owners may remove the Condominium from the provisions of Chapter 183A of the General Laws of Massachusetts and the Master Deed by the procedure set forth in the appropriate section of said Chapter 183A, as may be amended from time to time.

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, with undivided interest therein in the same percentage of undivided interest previously held by each Unit Owner in the common areas and facilities. Further, upon such removal, the Unit Owners shall be deemed to have withdrawn the Condominium property from the provisions of said Chapter 183A.

The removal provided for in this Section and in the Master Deed shall not bar the subsequent resubmission of the property to the provisions of Chapter 183A of the General Laws of Massachusetts.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership

Every person who is an Owner of record of a Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, except that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member of the Association.

Section 2 - Voting

A member of the Association shall be entitled to a vote in the percentage of interest appurtenant to the Unit in which he holds the interest required for membership as described in Paragraph 6 of the Master Deed. When more than one person holds such interest in any Unit, all such persons shall be members of the Association and the vote for such Unit shall be exercised as they, among themselves,

determine, but in no event shall more than one vote be cast on any issue with respect to any Unit and such vote shall be cast as an entirety as provided in the By-Laws of the Association.

ARTICLE IV - BOARD OF GOVERNORS

Section 1 - Constitution

The number of governors which shall constitute the whole Board of Governors shall be at least three (3) and no more than five (5), as provided in the Master Deed. Until succeeded by the governors elected by the members, the initial governors need not be Unit Owners. Upon the expiration of the term of each governor of the first Board of Governors, the successors to such governor, elected by the members of the Association, shall be a Unit Owner. Except as provided in the Articles of the Association with respect to the first Board of Governors (including successors appointed by the Declarant), governors shall be elected on an annual basis. In any event, however, each governor shall hold office until such time as his successor has been elected and qualified, except in the event of death, resignation, suspension of membership or sale of all his Units in the Condominium which renders such person ineligible to be a governor. In the event that a corporation or other legal entity is a member of the Association, it may designate one or more natural persons who shall be eligible to serve as governor.

Section 2 - Election

Subject to the provisions of the By-Laws of the Association

concerning the first Board (or any vacancy on such first Board), at each annual meeting of the Association or at a special meeting called for this express purpose, the members shall elect governors to fill such vacancies as may exist on the Board of Governors. There shall be no cumulative voting. The candidate receiving the highest number of votes for each vacancy shall be deemed elected.

Section 3 - Resignation

Any governor may resign at any time by giving written notice to the President or to the Clerk of the Association and thereupon such resignation shall take effect at the time specified in said written notice.

Section 4 - Powers and Duties of the Board of Governors

The Board of Governors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law, or by the Master Deed, or by the By-Laws of the Association, are reserved to the members of the Association acting at a properly called meeting or as are specifically allowed to the Association. Such powers and duties of the Board of Governors shall include, but shall not be limited to the following:

a. Providing for the operation, care, upkeep and maintenance of the common areas and facilities of the Condominium and its appurtenant structures as provided in Article VIII hereof.

b. Determining the common expenses of the Condominium,

including, subject to the limitation imposed by the Association or by the restrictions contained in the Master Deed, the operation and maintenance of the property, and the allocation of income and expenses.

c. Collecting the common charges from the Owners, including the right to enforce these collections by methods described elsewhere in the By-Laws of the Association.

d. Opening bank accounts on behalf of the Association and designating signatories required therefore.

e. Leasing, managing and otherwise dealing with such Condominium facilities as may be provided for as common areas and facilities, including without thereby limiting the generality of the foregoing the right to engage a professional management company, the right to grant permits, licenses and easements over the common areas for utilities, passage rights and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

f. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to it or purchased by it or by the Association as a result of enforcement of a lien for common expenses or otherwise.

g. Obtaining insurance for the common areas and facilities and for Units as provided elsewhere in the By-Laws of the Association.

h. Making repairs, additions, improvements to or

alterations of the common areas and facilities in accordance with the other provisions of the By-Laws of the Association and as described in the Master Deed.

i. Enforcing obligations to be performed or observed by the Unit Owners imposed on them by the Master Deed, the By-Laws of the Association and the Rules and Regulations promulgated pursuant thereto, including without limiting the generality of the foregoing, legal action to collect payment of common area expenses assessed. No legal action, however, shall be commenced, except as hereinafter provided, by the Association or its Board of Governors against parties other than unit owners or their mortgagees, without the prior affirmative vote of seventy-five (75%) percent of all the Unit Owners (based on beneficial interest in the Association) and specifying as a part of the vote a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith. Such vote shall also include, as a part thereof, a special assessment on all unit owners on an amount equal to such monetary limitation, payable within thirty (30) days and deposited in a segregated account which is to be used only for such purpose. Such legal action shall not be commenced until at least seventy-five (75%) percent of such assessment has been collected and so deposited.

j. Adopting rules and regulations relating to the use, upkeep and preservation of the Condominium.

k. Promulgating and collecting fines for violation of

the Rules and Regulations, which fines shall be paid to the Association.

l. Establishing a minimum thermostat temperature setting within each Condominium Unit.

m. Designating and setting aside portions of the common areas and facilities under their control (1) for the collection and reception of mail for the Condominium residents; (2) as a central disposal and collection site for trash and other refuse; (3) as a storage area for such tools, equipment and supplies as are used in the maintenance and upkeep of the Condominium; and (4) for any other purpose which the Board of Governors, in its discretion, deems to be in the best interests of the Condominium as a whole.

n. Electing whether to purchase on behalf of the Association any Unit in the Condominium at a foreclosure sale as hereinafter provided; however, that any such purchase by the Association shall have the prior approval of eighty-five (85%) percent of the Unit Owners, excluding the Unit in question.

Section 5 - The First Board of Governors and Subsequent Boards

The first Board of Governors and their successors shall be appointed by the Declarant, including such successors in the event of vacancy, and shall consist of three (3) members who shall serve until the third annual meeting of the members of the Association held pursuant to the provisions of Article V of these By-Laws of the

Association. At each annual meeting, beginning with the third annual meeting of the members of the Association, all members of the Board of Governors shall be elected by the members of the Association to fill vacancies the Board of Governors and/or vacancies created by expiration of a term and all such successors thereafter to the Board of Governors shall be Unit Owners and members of the Association. Any governor elected to fill a vacancy in the Board of Governors otherwise created shall be elected to fill the unexpired term.

Notwithstanding anything to the contrary in these By-Laws contained, those Governors appointed or selected by the Declarant as aforesaid shall resign no later than the earlier of the following events:

a. Four (4) months after seventy-five (75%) percent of the Units in the Condominium have been conveyed to Unit purchasers; or

b. Five (5) years after conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirement imposed by the Federal National Mortgage Association (FNMA) necessitating the transfer of control of the Condominium to the Unit Owners as above provided. For this purpose, "control" means the right of the Declarant to control the Unit Owners' Association or its Board of Governors, the Condominium itself or the Unit Owners in any manner, except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold Units.

Section 6 - Resignation and Removal

Any Governor may resign at any time by instrument in writing signed and duly acknowledged by that Governor in the manner required in Massachusetts for the acknowledgment of deeds, and such resignation shall take effect as in said instrument set forth. While the Declarant shall have the right to designate the Board of Governors of its choice, the Declarant may remove any Governor with or without cause and appoint a successor, and after the expiration of the Declarant's right to designate, any Governor may be removed with or without cause, by vote of Unit Owners entitled to more than fifty (50%) percent of the beneficial interest hereunder and the vacancy resulting from such removal shall be filled in the manner provided in Section 7 of this Article. Any removal shall become effective upon the filing with the Secretary of State a certificate of officers signed by the Clerk or Assistant Clerk of the Association.

Section 7 - Vacancies in the Board of Governors

Vacancies in the Board of Governors, other than the original Board, caused by any reason other than the removal of a governor under Section 6 of this Article, shall be filled by vote of a majority of the remaining governors at a special meeting of the Board of Governors held for that purpose, which meeting shall be held promptly after the occurrence of any such vacancy, even though the remaining governors present at such meeting may constitute less than a quorum, and each person so elected shall be a governor until the next annual meeting or special meeting of the members of the

Association duly called and held for the express purpose of electing a governor to fill the vacancy for the duration of the unexpired term, except that any vacancy occurring while the Declarant has the right to designate the Board of Governors shall be filled by appointment by the Declarant. Except for members of the Board of Governors, or their successors, appointed by the Declarant, no governor shall continue to serve as such if he shall cease to be a Unit Owner or if his membership shall be under suspension.

Section 8 - Board of Governors Meeting Following First Annual Meeting

Within ten (10) days after the first annual meeting of members of the Association, there shall be a meeting of the Board of Governors at such time and place as shall be fixed by the Unit Owners at such meeting and no notice shall be necessary to the governors in order legally to constitute such meeting, provided majority of the whole Board of Governors shall be present thereat.

Section 9 - Regular Meetings

Regular meeting of the Board of Governors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Governors. Notice by first class mail or home delivery of regular meetings shall be given to each governor at least three (3) days prior to the day named for such meeting.

Section 10 - Special Meetings

Special Meetings of the Board of Governors may be called by the President of the Association on three (3) business days' notice to each governor given by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Governors shall be called by the President or Clerk in like manner and on notice on written request of at least three (3) governors.

Section 11 - Waiver of Notice of Meetings

Any governor may at any time in writing waive notice of any meeting of the Board of Governors and such waiver shall be deemed equivalent to the receipt of such notice.

Section 12 - Quorum

At all meetings of the Board of Governors, a majority of the members thereof shall constitute a quorum for the transaction of business and the vote of a majority of the governors present at a meeting at which a quorum is present shall constitute the decision of the Board of Governors. If at any meeting of the Board of Governors, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Section 13 - Fidelity Bonds

The Board of Governors must maintain a fidelity bond or insurance coverage against dishonest acts on the part of the governors, employees or volunteers responsible for handling funds belonging to or administered by the Condominium Association of Unit

Owners as hereafter provided. The premium for such bonds shall constitute a common expense.

Section 14 - Compensation of the Board of Governors

No member of the Board of Governors shall receive any compensation from the Association for acting as such, except for reimbursement of necessary and duly incurred expenses.

Section 15 - Governors Not Liable

The governors shall not be liable to the members of the Association for any mistake of judgement, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall, to the extent of their Unit ownership, indemnify and hold harmless each member of the Board of Governors against personal contractual liability to others arising out of contracts made by the Board of Governors on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Master Deed or the By-Laws of the Association. It is intended that the members of the Board of Governors shall have no personal liability with respect to any contract made by them on behalf of the Association. The first Board of Governors is specifically authorized to contract for goods or services with the Declarant, or employees or affiliates of the Declarant, whether or not such persons are members of the Board of Governors and no such contract shall be deemed to involve a conflict of interest. It is also intended that the liability of any Unit Owner arising out of any

contract made by the Board of Governors out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as the percentage interest appurtenant to the Units owned by him bears to the total percentage of beneficial interests held by all of the Unit Owners in the Condominium, except for those Units owned by the Association. Every agreement made by the Board of Governors, its agents or appointees on behalf of the Association, shall provide that the members of the Board of Governors of the Association, or their agents or appointees, as the case may be, are acting only as agents for the Association and have no personal liability thereunder, except as Unit Owners, and that each Unit Owner's liability thereunder shall be limited to that proportion of the total liability as the percentage of beneficial interest appurtenant to the Unit(s) owned by him bears to the total percentage of beneficial interest held by Unit Owners in the Condominium, exclusive of Units owned by the Association.

Section 16 - Records

The Board of Governors shall cause to be kept detailed records of the actions of the Board of Governors and of the Association, including, but not limited to, minutes of the meeting of the Unit Owners and financial records and books of account of the Association, to which records the Unit Owners and their mortgagees shall be entitled to reasonable access.

Section 17 - Annual Report

The Board of Governors shall cause an annual report of the receipts and expenditures of the Condominium to be made at the end of each fiscal year by an independent, disinterested, certified public accountant and a copy of said report shall be sent promptly to each Unit Owner. The cost of the aforesaid annual report shall be a common expense. In addition, a copy of said report shall be kept on file at the office of the Association and shall be made available for inspection by the Unit Owners, holders of mortgages on Units, and their authorized agents during reasonable business hours.

ARTICLE V - MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 1 - Annual Meetings; Election of Governors

On the first anniversary following the incorporation of Audubon Hill South Condominium Association, Inc., the Board of Governors shall call the first annual meeting of the members of the Association. Thereafter, annual meetings shall be held on the anniversary date of such meeting. In each succeeding year, the date of the annual meeting may be changed by proper amendment to the By-Laws of the Association. beginning with the second annual meeting of the members of the Association, unless the right of the Declarant to appoint members of the Board of Governors shall have previously expired as in Section 5 of Article IV provided, all members of the Board of Governors shall be elected by ballot of the members of the Association in accordance with the provisions of the By-Laws of the Association. The members of the Association may also transact such

other business of the Association as may properly come before them.

Section 2 - Location of Annual Meetings

Meetings of the members of the Association shall be held at the principal office of the Association, or at such other suitable place convenient to the members of the Association as may be designated by the Board of Governors.

Section 3 - Special Meetings

It shall be the duty of the President to call a special meeting of the members of the Association as directed by the Board of Governors or upon delivery to the Clerk of a petition signed by at least one-third (1/3) in interest of the members of the Association.

Section 4 - Notice of Meetings

It shall be the duty of the Clerk to mail or deliver to each Unit Owner of record a notice of each annual and special meeting, stating the purpose(s), date, time and place thereof at least five (5), but no more than ten (10), days prior to such meeting. Mailing or delivery of a notice in the manner provided in these By-Laws shall be considered notice served. Notice of a meeting need not be given to a Unit Owner if a written waiver thereof executed by such Unit Owner or by his duly authorized attorney or agent before, during or after the meeting, is filed with the records of the meeting.

Section 5 - Quorum

Except as provided otherwise in the By-Laws of the Association, the presence in person or by proxy of a majority in

interest of the members of the Association shall constitute a quorum at all meetings of the members of the Association. If any meeting of the members of the Association cannot be held because a quorum is not presented, a majority in interest of the members of the Association who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time for which the original meeting was called.

Section 6 - Voting

The member(s) of the Association, or some person designated by each such member ~~of the Association to act as proxy~~ on his or their behalf, who need not be a Unit Owner, shall be entitled to cast the vote appurtenant to such Unit at any meeting of the members of the Association, provided the member is not under suspension. The designation of any proxy shall be made in writing to the Clerk and shall be revocable at any time prior to or at the meeting upon written notice to the Clerk by the member(s) so designating. Any and all members of the Association may be present at any meeting of the members of the Association, either in person or by proxy. Each member of the Association, including the Declarant, shall be entitled to cast one (1) vote at all meetings of the members of the Association, which vote shall be weighed by multiplying it by the beneficial interest percentage appurtenant to the Unit(s) owned by such member of the Association as set forth in the Master Deed; provided, however, that the vote attributable to each Unit must be

voted as an entirety and if Owners of a Unit shall be unable to agree on the vote to be cast on any issue, their right to vote on that issue shall be deemed waived. Any Units owned by the Association or Board of Governors on behalf of the Association shall not be entitled to vote and shall be excluded from the total number of Units in the Condominium when computing the proportionate interest of all Unit Owners for voting purposes.

Section 7 - Majority Defined

As used in the By-Laws of the Association, "majority of members of the Association" shall mean any aggregation of members of the Association having more than fifty (50%) percent of the beneficial interest of all members of the Association, present in person or by proxy, as determined in accordance with Section 6 of this Article. The vote of a majority of members of the Association present at a meeting at which a quorum is present shall be binding upon all Unit Owners for all purposes, except when a higher percentage vote is required by law, the Master Deed or the By-Laws of the Association.

ARTICLE VI - OFFICERS

Section 1 - Principal Officers of the Association

The principal officers of the Association shall be the President, the Clerk and the Treasurer. The initial officers shall be those designated in the Articles of Organization. Their successors shall be elected by the Board of Governors to serve as

such officers. The President and Treasurer shall be members of the Association. The Board of Governors may appoint a Vice President, Assistant Treasurer, Assistant Clerk and such other officers as it deems necessary or appropriate for the conduct of the business of the Condominium and may thereafter remove or replace said appointees at any time at the pleasure of the Board of Governors.

Section 2 - Selection and Removal of Officers

The officers shall be elected annually at the first meeting of the Board of Governors following the annual meeting of members of the Association and shall hold office at the pleasure of the Board of Governors or until their successors are elected and qualified. Upon affirmative vote of a majority of the Board of Governors at a regular or special meeting thereof called for that purpose, any officer may be removed, either with or without cause, and his successor elected.

Section 3 - President

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the members of the Association and of the Board of Governors. He shall have all of the general powers and duties incidental to the office of President, including, but not limited to, the power to appoint committees from among the members of the Association from time to time, as he may, in his discretion, decide are appropriate to assist in the conduct of the affairs of the Association.

Section 4 - Clerk

The Clerk shall keep minutes of all meetings of the members of the Association and of the Board of Governors, shall have charge of such books and papers as the Board of Governors shall direct, and shall perform all duties incidental to the office of the Clerk and as described elsewhere in the By-Laws of the Association or the Master Deed.

Section 5 - Treasurer

The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of required financial data. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Governors or the Association in such depositories as may from time to time be designated by the Board of Governors and he shall perform all duties incidental to the office of Treasurer. No payment voucher shall be paid unless and until approved by the Treasurer.

Section 6 - Execution of Documents for the Board of Governors

All agreements, contracts, deeds, leases, checks and other instruments of the Association or the Condominium shall be executed by such officer or officers of the Association or by such other person(s) as may be authorized by the Board of Governors.

Section 7 - Compensation of Officers

No officer shall receive any compensation from the

Association for acting as such, except for reimbursement of necessary and duly incurred expenses.

Section 8 - Resignation

Any officer may resign at any time by giving written notice to the Board of Governors, the President or the Clerk. Any such resignation shall take effect at the date of the receipt of such notice or any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to render it effective.

ARTICLE VII - NOTICES

Section 1 - Notice Procedure

Whenever under the provisions of the Master Deed or the By-Laws of the Association, notice is required to be given to the Association, the Board of Governors or any Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, either by mail, by depositing the same in a post office or letter box in a postpaid, sealed wrapper addressed to the Association, the Board of Governors or such Unit Owner, respectively, at such address as appears on the books of the Association, provided that such mailing is made in The Commonwealth of Massachusetts, or by delivery to said person's address. Notice shall be deemed given if mailed as of the date of mailing or if otherwise, as of the date of delivery.

Section 2 - Waiver of Notice

Whenever any notice is required to be given under the provisions of the Master Deed, the law or the By-Laws of the Association, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VIII - OPERATION OF THE CONDOMINIUM

Section 1 - Budget

a. The Board of Governors shall, from time to time and at least annually, prepare a budget for the Association and, in connection therewith, determine the amount of common expenses of the Association and allocate and assess common expenses among the Unit Owners according to the respective percentages of ownership in the Condominium as set forth in the Master Deed. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be, or which have been, obtained by the Board of Governors, pursuant to the provisions of the By-Laws of the Association. The common expenses shall also include the amounts estimated for the operation, care, upkeep and maintenance of the Condominium, including, without limitation, any amount for working capital of the Association, for a general operating reserve, an adequate reserve fund for maintenance, repair and replacement of those portions of the common areas and facilities which must be placed on a periodic basis and to make up any deficit in the common expenses of any prior year. The common expenses may also include

such amounts as may be required for the purchase or lease by the Board of Governors on behalf of all the Unit Owners, of any Unit whose Owner has elected to sell or lease such Unit, or any Unit which is to be sold at foreclosure or other judicial sale, such purchase or lease to be in accordance with the provisions of Article XII hereof.

b. In addition, a working capital fund shall be established for the initial months of Condominium operation equal to at least two (2) months' estimated common area charges for each Unit, which funds shall be collected and transferred to the Association at the time of delivery of the first Unit deed of each Unit, and which shall be maintained in a segregated account for the use and benefit of the Association. The contribution to such funds for each unsold Unit shall be paid to the Association within sixty (60) days after the date of the conveyance of the first Unit. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Governors. Amounts paid into the fund shall not be considered advance payment of regular assessments.

c. The Board of Governors shall advise all Unit Owners promptly in writing of the amount of the common charges payable by each of them, respectively, as determined by the Board of Governors and shall furnish copies of each budget on which such charges are based to all Unit Owners and to their mortgagees. The Declarant will

be required to pay common charges in full on any Unit owned by it. A separate statement will be provided each Unit Owner by the Association as to charges due for services provided by it on behalf of the Association, including the Unit Owner's share of the charges for services provided in the Condominium.

Section 2 - Payment of Common Charges

All Unit Owners shall pay the monthly and special common charges when assessed by the Board of Governors, pursuant to the provisions of the By-Laws of the Association.

No Unit Owner shall be liable for the payment of any part of the common charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him, duly recorded in the Middlesex South District Registry of Deeds, including conveyance to the Association.

Each assessment against a Unit shall also be the personal obligation of the Unit Owner, in accordance with the first paragraph of this Section. Subject to the provisions of Section 3 of this Article, a purchaser of a Unit shall not be liable for the payment of common charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit unless assumed by him or required by applicable law and a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall be subject to, but not personally liable for, a lien for unpaid common charges assessed prior to the foreclosure sale, except as otherwise provided in Paragraph 17 of the

Master Deed with respect to first mortgages.

Section 3 - Default

In the event of default by any Unit Owner in the payment of common charges, such Unit Owner shall be obligated to pay interest at an annual rate equal to two (2%) percent above the prime rate as charged by The First National Bank of Boston at the time of such default, together with all expenses, including reasonable attorneys' fees, incurred by the Board of Governors in collecting same. The Board of Governors shall seek to recover such common charges, together with interest and expenses, from Unit Owners who fail to pay such assessment within thirty (30) days after the due date (or within such shorter period of time as may be determined by the Board of Governors) by action to recover the same, including reasonable attorneys' fees, brought against such Unit Owner or by foreclosure of the lien such unpaid charges have become on the Unit(s), or by such other action, including the commencement of legal action, as the Board of Governors may deem reasonably required under the circumstances.

Section 4 - Power to Suspend Rights of Membership

In the event of default by any Unit Owner in the payment of common charges, or any other amounts owed to the Association, the Board of Governors shall have the power to suspend the Unit Owner's membership rights and privileges in the Association, including the right to serve on the Board of Governors, but such suspension shall

remain in effect only until such amounts as are owed are paid.

Section 5 - Foreclosure of Liens

In any action brought by the Board of Governors to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall be required to pay in addition to all other charges and assessments a reasonable rental for the use and occupation of his Unit, if such use continues after the foreclosure, and the plaintiff in such foreclosure action, in addition to all other rights and remedies to which it may be entitled,. shall be entitled to the appointment of a receiver to collect the same. The Board of Governors, acting on behalf of the Association, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, convey, mortgage (but not to vote the share(s) appurtenant thereto) and otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing same.

Section 6 - Statement of Unpaid Common Charges and Priority of Lien

The Board of Governors shall promptly provide any Unit Owner requesting the same, in writing, with a written statement of all unpaid common charges due from such Owner in form suitable for recording and the same, when recorded with the Middlesex South District Registry of Deeds, shall operate to discharge the Unit from any other charges not included in such statement then unpaid.

a. To the extent permitted by applicable law, any lien of the Association for common expense assessments or other charges becoming payable on or after the date or recordation of the first mortgage on any Unit shall be subordinate to said mortgage. In addition, any fees, late charges, fines or interest which may be levied by the Association in connection with unpaid assessments shall be subordinate to said mortgage.

b. A lien for common expense assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer. Any such delinquent assessments which are so extinguished may be reallocated assessed to all Unit estates as a common expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any assessment made thereafter.

Section 7 - Maintenance

a. All maintenance and replacement of repairs to any Unit, whether structural or non-structural, ordinary or extraordinary, and to the doors and windows, electrical, plumbing, heating, air conditioning, water and sewer facilities and fixtures belonging to a Unit Owner and not part of the common areas and facilities or the areas concerning which easements have been conveyed

to the Association, shall be done by the Unit Owner and at the Unit Owner's expense, except as otherwise specifically provided herein; provided that all repair, replacement, painting or decorating of the exterior of any Unit, shall be done by the Association, or its appointee, as a common charge, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner in the same manner as a common charge and enforceable in the same manner as a common charge.

b. All maintenance, repair and replacements to the common areas and facilities or to those areas concerning which easements have been conveyed to the Association shall be done by the Board of Governors, or its appointee, and shall be included as a common expense of the Association, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner in the same manner as a common charge and enforceable in the same manner as a common charge.

Section 8 - Restrictions

a. No nuisances shall be allowed in the Condominium, nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful enjoyment of the Condominium.

b. No immoral, improper, offensive or unlawful use

shall be made of the condominium or any part thereof and all laws, zoning by-laws, ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed.

c. Signs - No signs, plaques or communication of any description shall be placed on the exterior of any Unit or any common area or facility by a Unit Owner or his agent.

Section 9 - Improvement Restriction

a. No improvements, additions, alterations or other work which in any way alters the exterior appearance or structure of any Unit from its natural or improved state existing on the date such Unit was first conveyed in fee by the Declarant shall be made or done, except as provided in the Master Deed and herein.

b. The Board of Governors may authorize that Units in common ownership be connected for the purpose of single occupancy and that for such purposes cuts be made in common walls or floors; provided, always, that the owners of the Units permitted so to combine them shall do any work in connecting Units at such owners' expense and only in the manner prescribed by the Board of Governors. Any such authorization shall be valid only if in writing signed by a majority of the Board of Governors then in office and shall become void unless the work to connect the Units shall be commenced within six (6) months after the date of authorization and shall be completed within a reasonable time thereafter. At such time as connected Units are no longer to be common ownership, the owners of such Units shall

promptly restore the common walls and/or floors between the Units at their expense and upon failure to do so, the Board of Governors may perform or cause to be performed such work, in which event such Unit Owners shall be personally liable to the Association for the cost of the work which, if not paid when demanded, shall constitute a lien on the Units in question in proportion to their respective common interests. Such lien shall be valid notwithstanding any conveyance of the Units, or any of them, out of ownership prior to demand or any filing in the Registry of Deeds to enforce the lien.

c. The Board of Governors may authorize that exclusive use of one or more common areas be assigned to one or more Units for such time and on such conditions as the Board of Governors may determine, provided such use does not interfere with the use and enjoyment of any other Unit, which conditions may, without limitation, include a requirement that the Unit Owners so benefitted pay, as additional common expenses, such costs of said common areas as the Board of Governors from time to time may determine. The failure of the Board of Governors granting said exclusive use to require payment of any such costs as a condition of such exclusive use shall not preclude those Board of Governors, or any successor Governors, from imposing reasonable additional common expenses for the exclusive use of said common areas. Unless otherwise provided in writing signed by a majority of the Board of Governors and recorded with the Middlesex South District Registry of Deeds, such rights of

exclusive use of common areas shall be personal to the Unit Owners to whom granted and shall terminate when such Unit Owners no longer own the Units so benefitted.

Section 10 - Cost Allotment of Improvements

a. If fifty (50%) percent or more, but less that seventy-five (75%) percent of the Unit Owners agree to make an improvement to the common areas and facilities or to areas concerning which an easement has been granted to the Association, the cost of such improvement shall be borne by the Unit Owners so agreeing.

b. Seventy-five (75%) percent or more of the Unit Owners may agree to make an improvement to the common areas and facilities or to areas concerning which an easement has been granted to the Association and assess the cost thereof as a common expense, but if such improvement shall cost in excess of ten (10%) percent of the then total value of the Condominium, any Unit Owner not so agreeing may apply to the Middlesex Superior Court, on such notice to the Board of Governors as the Court shall direct, for an order directing the purchase of his Unit(s) by the Association at fair market value thereof as approved by the Court. The cost of any such purchase shall be a common expense.

c. All improvements undertaken pursuant to this section shall be subject to the prior written approval of the Board of Governors.

Section 11 - Right of Access

A Unit Owner shall grant a right of access to his Unit(s) to the Association and/or any other person authorized by the Board of Governors for the purpose of making inspections or for the purpose of correcting any conditions originating in his Unit and threatening another Unit or a common area or facility, or for the purpose of performing installations, alterations or repairs to the parts of the Condominium over which said person(s) has (have) control and/or responsibility for maintenance. Requests for such access must be made in advance and entry must be at a time reasonably convenient to the Unit Owner. In an emergency, such right of entry shall be immediate, whether the Unit Owner is present or not.

Section 12 - Rules and Regulations of the Association

The use of the Units and the common areas and facilities in the Condominium shall be subject to Rules and Regulations from time to time adopted by the Board of Governors. Such Rules and Regulations shall be called Audubon Hill South Condominium Rules and Regulations and copies of such Rules and Regulations shall be made available to each Unit Owner prior to their effective date.

Section 13 - Right of Action

The Board of Governors, on behalf of the Association and any aggrieved Unit Owner, shall have the appropriate right of action against Unit Owners for failure to comply with the provisions of the Master Deed, By-Laws and Rules and Regulations of the Condominium. Unit Owners shall have similar rights of action against the Board of

Governors.

Section 14 - Ingress and Egress of Unit Owners

There shall be no restrictions upon any Unit Owner's right of ingress and egress to his or her Unit, which right shall be perpetual and appurtenant to the Unit ownership.

ARTICLE IX - INSURANCE

Section 1 - Minimum Coverage - Association

The Association shall obtain and maintain, to the extent available, the following:

a. A master policy covering all the common elements (except land, foundation, excavation and other items normally excluded from coverage), including fixtures and building service equipment to the extent that they are part of the common elements of the Condominium, as well as common personal property and supplies and other common personal property belonging to the Association; the master policy shall also include any fixtures, equipment or other property within the Units which are customarily considered part of a Unit for mortgage purposes regardless of whether such property is part of the common elements).

The master policy shall afford protection at least against the following:

(i) loss or damage by fire and other perils covered by the standard extended coverage endorsement;

(ii) all other perils which are customarily covered

with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement.

The policy shall be in an amount equal to one hundred (100%) percent of current replacement cost of the Condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage including those other items specifically from coverage elsewhere within this paragraph and shall include Agreed Amount and Inflation Guard Endorsements if obtainable, and construction code endorsements, if there is a construction code provision that requires change to undamaged portions of the buildings even where only part of the Condominium is destroyed by an insured hazard.

The named insured shall be the Association "for the use and benefit of the individual Owners" and each First Mortgagee, its successors and assigns, shall be named in the standard mortgage clause for each Unit on which there is such a mortgage.

The policy shall contain a clause which provides that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

In addition to the foregoing, the policy shall provide for the following:

(i) recognition of any insurance Trust Agreement (if

any there be);

(ii) a waiver of the right of subrogation against any Unit Owners individually;

(iii) the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners that are not in control of the Association; and

(iv) a "Special Condominium Endorsement" providing that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

b. Steam boiler coverage for loss or damage resulting from steam boiler equipment accidents in an amount not less than $50,000.00 per accident, per location, if there exists on the premises any steam boilers.

c. If any portion of the Condominium property is in a flood hazard area, flood insurance in an amount not less than:

(i) the maximum coverage available under the National Flood Insurance Program (NFIP) for all buildings and other insurable property within a designated flood hazard area; or

(ii) one hundred (100%) percent of current "replacement cost" of all such buildings and other insurable property.

d. Liability insurance for comprehensive general liability coverage covering all common areas, public ways of the Condominium and any other areas that are under the supervision of the

Association. Such coverage shall be for not less than $1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence and shall include, without limitation, legal ability of the insureds for property, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas, and legal liability arising out of law suits related to employment contracts of the Association, and shall provide further that such policy or policies may not be cancelled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to the First Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

e. Fidelity bonds in blanket form for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association whether or not they receive compensation for their services. The total amount of fidelity bond coverage shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of such bond, and, in any event, the aggregate amount shall not be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds, or one and one-half times the insured's estimated annual operating expenses and reserves, whichever is greater.

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression; and

(iii) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to the First Mortgagees which are listed as scheduled holders of first mortgages in the insurance policy.

(iv) The premium shall be a common expense.

ARTICLE X - DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 1 - Duty to Repair or Restore

Any portion of the Condominium, including the buildings erected within the Condominium, damaged or destroyed shall be repaired or restored promptly by the Association, as provided in this Article, subject to the provisions of Chapter 183A, Section 17, of the General Laws of Massachusetts as the same may be amended from time to time.

Section 2 - Estimate of Cost

Promptly after damage to or destruction of some portion of the Condominium and thereafter as often as it deems advisable, the

Board of Governors shall obtain reliable and detailed estimates of the cost of repair or restoration. If such cost, in the opinion of the Board of Governors, may exceed Five Thousand and No/100 ($5,000.00) Dollars, the Board of Governors may retain the services of an architecture or engineer or construction consultant to assist in the determination of such estimates and in the supervision of repair and restoration.

Section 3 - Collection of Construction Funds

Construction Funds may consist of insurance proceeds, condemnation awards, proceeds of assessments against Unit Owners, payments of Unit Owners for damage to or destruction of improvements and other funds received on account of or arising out of injury or damage to the Condominium.

a. Insurance Proceeds - The Board of Governors shall adjust losses under physical damage insurance policies of the Association. Insurance proceeds from losses in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars shall be payable to the insurance trustee as hereinafter defined.

b. Assessments Against Owners - If the insurance proceeds are insufficient to effect the necessary repair or restoration of the common areas and facilities, such deficiency shall be charged against all Unit Owners as a common expense. The proceeds of assessments for such common expenses shall be paid by the Board of Governors directly to the vendor making the repairs or restoration if

the loss is less than Twenty-Five Thousand and No/100 ($25,000.00) Dollars and shall be paid to the insurance trustee, if in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars and shall be paid to the insurance trustee, if in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars.

c. Payment by Owners - Payments received from Unit Owners, pursuant to Section 5.a.2 of this Article, shall be paid by the Board of Governors to the insurance trustee, if the loss is in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars, otherwise by the Board of Governors directly to the vendor making the repairs.

d. Payments by Others - Any other funds received on account of or arising out of injury or damage to the Condominium shall be paid by the Board of Governors to the insurance trustee, if the loss is in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars, otherwise funds shall be administered directly by the Board of Governors.

Section 4 - Plans and Specifications

Any repair or restoration must be either

a. Substantially in accordance with the architectural and engineering plans and specifications for the original buildings and shall also include such improvements and fixtures as may have been installed by a particular Unit Owner and as to which payment for such repair or reconstruction is forthcoming; or

b. according to plans and specifications approved by the Board of Governors and by a majority in beneficial interest of the Unit Owners and the holders of first mortgages encumbering fifty-one (51%) percent of the Units subject to mortgages, which approvals shall not be unreasonably withheld.

Section 5 - Units

Damage or destruction of improvements situated within a Unit shall be repaired or restored, except after a determination not to repair or restore, pursuant to Section 6e. of this Article, as follows:

a. Construction Funds

1. To the extent that such damage or destruction is covered by insurance of the Association, the proceeds of such insurance or award shall be made available for the repair or restoration of the Unit.

2. To the extent that such damage or destruction is not covered by insurance of the Association, such Unit Owner shall be responsible for the cost of repair and restoration.

3. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of a Unit Owner, then the Unit Owner shall be responsible for the cost of reconstruction and repair after casualty, unless such damage is specifically covered by the insurance purchased by the Association, in which event, the Association shall be responsible for said costs.

b. Performance of Work and Payment

If there is damage to or destruction of all or part of the Condominium and the combined damage or destruction to the common areas and facilities and all affected property which the Association is responsible to insure exceeds Five Thousand and No/100 ($5,000.00) Dollars, the repair or restoration of the property shall be effected by the Association to the extent that construction funds as described in Subsection a.1. of this Section are available and to the extent that the Unit Owners make payment as hereafter provided. Each Unit Owner shall pay to the Board of Governors such sum as is necessary, according to the estimate of cost described in Section 2 of this Article, to cover any part of the cost of repair or restoration which is not covered by insurance of the Association or by a condemnation award not specifically allocated to the Unit Owner.

Section 6 - Disbursements of Construction Funds

The insurance trustee shall deduct from the construction funds its actual costs, expenses and a reasonable fee for the performance of its duties and shall disburse the balance in the following manner:

a. Damage or destruction not exceeding Twenty-Five Thousand and No/100 ($25,000.00) Dollars

Such proceeds are not payable to nor under the control of the insurance trustee, but shall be administered by the Board of Governors.

b. Payment for Repair and Restoration

The insurance trustee shall apply such balance to pay directly and to reimburse the Association for the payment of the costs of repair or restoration of such Units and in common areas and facilities, including the cost of temporary repairs for the protection of such Units and common areas and facilities pending the completion of permanent repairs and restoration, upon written request of the Association, in accordance with Section 7.a. of this Article, and upon presentation of an architect's certificate stating that the work presented by such payment has been completed satisfactorily.

c. Contribution by Owners

The Association shall maintain a separate account as to each Unit with respect to payments by Unit Owner, pursuant to Section 5.a.2 of this Article, and expenditures of such payments. General expenses of administration, such as deductions by the insurance trustee for its costs, expenses and fees, shall be charges against the Association's construction funds and against Unit Owner's payments, pursuant to Section 5.a.2. of this Article, in proportion to the amounts of each. All portions of such payments by Unit Owners not expended as herein provided shall be refunded to the Unit Owners and the mortgagees of the Units as their interests may appear.

d. Surplus Funds

If, after payment of all repairs and restoration and the refund of any excess payments by Unit Owners, pursuant to

Subsection c. of this Section, there remains any surplus funds, such funds shall be paid to the Unit Owners in proportion to their contributions resulting from assessments levied against them, pursuant to Section 3.c. of this Article; provided, however, that no Unit Owner shall receive a sum greater than that actually contributed by him. Any surplus remaining after such payment shall be paid to the Association and shall be part of its general income.

e. Determination Not to Repair or Restore

Subject to the provisions of Chapter 183A, Section 17, of the General Laws of Massachusetts, if there is destruction of the Condominium exceeding ten (10%) percent of its value prior to the casualty and Seventy-Five (75%) percent in interest of the Unit Owners do not agree to proceed with repair or restoration within 120 days after the date of casualty, any balance of construction funds, after the refund of any payments by Unit Owners, pursuant to Subsections c. and d. of this Section, shall be disbursed in accordance with the proportion of beneficial interest appurtenant to the Unit(s) owned by each Unit Owner bears to the total percentage of beneficial interest held by Unit Owners in the Condominium, excepting for those Units owned by the Association. In the event of dispute as to the percentage of destruction, or the allocation of disbursements hereunder, the same shall be submitted to arbitration in accordance with the rules of the American Arbitration Association.

Section 7 - Certificates

The insurance trustee may rely on the following certifications:

a. By the Board of Governors - The Board of Governors shall certify to the insurance trustee, in writing, as to the following matters:

1. Whether or not damage or destroyed property is to be repaired or restored

2. Whether or not, in the opinion of the Board of Governors, the cost of repair or restoration may exceed Twenty-Five Thousand and No/100 ($25,000.00) Dollars

3. The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

b. By Attorneys - The Board of Governors shall furnish the insurance trustee, in the event that any payments are to be made to a Unit Owner of mortgagee(s), with an Attorney's Certificate of Title based upon a search of the land records from the date of the recording of the original Master Deed, stating the name of the Unit Owner and the mortgagees.

Section 8 - Insurance Trustee to Administer Insurance Proceeds in the Event of Loss

The Board of Governors shall enter into and keep in force a Trust Agreement with a bank in the Commonwealth of Massachusetts with trust powers to receive, administer and disburse funds, provided

losses are in excess of Twenty-Five Thousand and No/100 ($25,000.00) Dollars in each instance, pursuant to this Article. Such Trust Agreement shall incorporate the Master Deed and the By-Laws of the Association by reference and shall provide that, upon termination thereof, all monies or funds held by the insurance trustee shall be turned over only to a successor insurance trustee which shall also be a bank in the Commonwealth of Massachusetts with trust powers designated insurance trustee, pursuant to this Article. No amendment of the Master deed or the By-Laws of the Association shall be binding on the insurance trustee until the insurance trustee receives notice of such amendment.

ARTICLE XI - MORTGAGES

Section 1 - Notice to Board of Governors

A Unit Owner who mortgages his Unit shall notify the Board of Governors in writing of the name and address of the mortgagee, and such notice may be given by the mortgagee. The Board of Governors shall maintain a current list of such information and a mortgagee shall remain on such list until the Board of Governors receives written notice from such mortgagee to the contrary or a copy of the discharge of mortgage.

Section 2 - Listed Mortgagee

As used in these By-Laws, "listed mortgagee" shall mean a lender holding a first mortgage of record on a Unit of which the Unit Owner or mortgagee affected has given the notice required in Section

1 of this Article. Such mortgage shall remain a listed mortgagee until the board of Governors receives written notice from the mortgagee of withdrawal of the listing or the mortgage is discharged of record.

Section 3 - Unpaid Common Charges

The Board of Governors, whenever so requested in writing by a mortgagee of a unit, shall promptly report any then unpaid common charges due from, or any violation of the provisions of the Master Deed or these By-Laws by the Unit Owner of the mortgaged Unit which has not been cured within sixty (60) days.

Section 4 - Notice of Default

The Board of Governors, when giving notice to a Unit Owner of a default for nonpayment of common expenses or any other default or violation, shall send a copy of such notice to each mortgagee of the Unit whose name and address has theretofore been furnished to the Board of Governors.

Section 5 - Examination of Books

Each mortgagee of a Unit, shall be permitted to examine the books, accounts and records of the Association at reasonable times on business days.

Section 6 - Notice of Loss

The Board of Governors shall give each first mortgage of which they shall have a record, pursuant to Section 1 of this Article, notice whenever there is (a) damage to a mortgaged Unit in

excess of One Thousand and No/100 ($1,000.00) Dollars (notice to the mortgagee of the damaged Unit) or (b) damage to common areas and facilities in excess of Ten Thousand and No/100 ($10,000.00) Dollars (notice to all mortgagees).

ARTICLE XII - SALE OF UNITS

Section 1 - Appurtenant Interest

No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Unit, without including therein the appurtenant interest. For the purposes of this Section, "appurtenant interest" shall include, in addition to those appurtenances described in the Master Deed, and those in the By-Laws of the Association, the following:

a. such Unit Owner's undivided interest in the common areas and facilities and the rights in areas concerning which easements have been conveyed to the Association;

b. membership in the Association;

c. the interest of such Unit Owner in any other assets of the Association.

Any deed, mortgage or other instrument purporting to affect a Unit shall be deemed and taken to include the appurtenant interest, whether or not such interests are specifically included therein. No part of the appurtenant interest of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest is appurtenant or as

part of a sale, transfer or other disposition of such part of the appurtenant interest of all Units in the Condominium.

Section 2 - Waiver of Rights of Partition

In the event that a Unit shall be acquired by the Association, the Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

ARTICLE XIII - AMENDMENTS TO THE BY-LAWS OF THE ASSOCIATION

The By-Laws of the Association may be modified or amended by the affirmative vote of sixty-six and two thirds (66 2/3%) percent (or any larger percentage, if such modification or amendment affects a provision requiring a larger percentage) in beneficial interest of all members of the Association, present in person or by proxy at a meeting of such members of the Association duly called and held for such purpose.

ARTICLE XIV - CONFLICTS

In case any of the By-Laws of the Association are in conflict with the provisions of any statute, the Article of the Association or the Master Deed, the provisions of said statute, Articles of the Association or Master Deed, as the case may be, shall control.

ARTICLE XV - MISCELLANEOUS

Section 1 - Invalidity

The invalidity of any part of the By-Laws of the Association shall not impair or affect in any manner the validity, enforceability or effect of the balance of the By-Laws of the Association.

Section 2 - Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the By-Laws of the Association or the intent of any provisions thereof.

Section 3 - Waiver

No restriction, condition, obligations or provision contained in the By-Laws of the Association shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which occur.

Duly adopted by the Audubon Hill South Condominium Association, Inc., this _____ day of _____, 1988.

_____

_____

k/audsobylaws

RSD

R. SMITH DEVELOPMENT CORP.

294 GREAT ROAD • ACTON, MASSACHUSETTS 01720 • TEL. (617) 263-0011

AUDUBON HILL

August 2, 1988

Mr. Alfred Steinhauer, Chairman
Council on Aging
Town Hall
Acton, MA 01720

Subject: Elderly Center

We recently received a progress print and specifications dated July 27 from Gauchat Architects which covers everything talked about with yourself, Stanton Collins and Carol Lake at past meetings. Attached is one set.

Note on page 2 of the specification the Town will have to select the floor covering at the recreation/dining halls in the new addition and an allowance has been provided for this.

Stanton Collins recently asked about the rooms in the existing house.

Summarized below are the modifications contemplated for the existing house:

Downstairs

1. Existing vestibule modified to add handicap doors(3' wide) and raise vestibule floor for handicap access.

2. Add new door into recreation hall - windows on party wall side of existing house would have to be sealed off.

3.Kitchen equipment removed and room converted into an office, opening to reception widened to 3 feet.

4. Library floor to be leveled with existing house floor - it is now one step down.

5. Stairway leading upstairs should be given a second handrail.

6. New opening installed between reception area and former dining room.

7. Add 2 new windows:
One between vestibule and reception
One between office and library -north side
If practical reuse windows from party wall side of house(See # 2).

Upstairs

1. Seal off windows on party wall side

2. Remove fixtures from bathroom at head of stairs to add an exit door where there is now a window.

General

1. Interior and Exterior painting to match new construction

2. Clean up existing floors as required

3. Install new emergency lighting and exit signs. Add whatever electrical outlets are desired

4. Separate existing heating system may need updating

5. Sewer tie-ins to be made to new septic system

We suggest an early meeting to review the above summary and discuss what items the Town would be in a position to take care of.

Sincerely,

John W. Kelly

John W. Kelly

JWK:bwu

cc: Carol Lake w/a
[redacted]
R. Smith RCS
R. Eifler
G. Gogas/K. Diskin
H. Donahue

July 29, 1988

PRELIMINARY OUTLINE SPECIFICATIONS

ELDERLY CENTER ADDITION
AUDUBON HILL
ACTON, MA

All items specified by brand name are understood to include the phrase "or approved equal".

A. Sitework

- o Bituminous paving per Town specifications
- o Bituminous sidewalks, bituminous Cape Cod berm
- o Concrete retaining walls where required
- o Fieldstone garden walls if indicated
- o 'Bomanite' concrete patios
- o Gutters & perimeter drains tied to stone swale or drywell

B. Concrete

- o 2500 psi 28 day strength
- o 10"x20" footings
- o 10" foundation walls with 2 #5 Rebar reinf. top and bottom
- o 4" slabs on 6" gravel w/ 10/10 w.w.f.

C. Metals

- o Mud sill anchors @ 4'0" o.c.
- o ASTM A-36 steel as required
- o Standard 18 gauge metal framing accessories

D. Carpentry

- o 2x6 pressure treated sills
- o 2x6 studs @ 16" o.c. @ exterior walls
- o 2x4 studs @ 16" o.c. @ interior walls
- o Pre-engineered or site-built fir trusses @ 8' o.c.
- o 2x10 rafters 16" o.c.
- o 1/2" CDX plywood or waterboard wall sheathing
- o 5/8" CDX plywood roof sheathing
- o Western Red Cedar clapboard siding 4" t.w., pre-stained
- o 1" clear spruce/pine/fir exterior trim, painted
- o Pressure treated exterior lumber @ exterior stair

- 8" wood columns, painted

E. Insulation

- o 2" rigid foam perimeter insulation
- o 1/2" x 6" fiberglass sill sealer
- o 6" R-19 fiberglass in exterior walls
- o 9" R-30 fiberglass in ceilings
- o Propervent ventilation chutes at eaves and sloped ceilings
- o Continuous aluminum ridge venting
- o Continuous aluminum soffit venting

F. Moisture Protection

- o One coat asphaltic compound sprayed on foundation walls
- o 4 mil polyethylene vapor barrier at walls, ceilings, slabs
- o Class A 25 year heavyweight architectural asphalt shingles
- o Aluminum flashing
- o Aluminum gutters and downspouts where indicated
- o "Bituthene" eave and valley subflashing
- o Butyl and acrylic sealants where required

G. Doors and Windows

- o Wood framed clad insul. double-hung windows w/ screens
- o Insulated steel entry doors and sidelights
- o Molded six-panel interior doors, painted
- o B and C label solid core wood doors where required in rated construction
- o Schlage Orbit interior and exterior locksets
- o Handicap hardware where required
- o Polished brass hardware throughout

H. Finishes

- o 1/2" smooth finished gypsum wall board, painted
- o 1/2" spray textured gypsum wall board ceilings
- o 5/8" firecode gypsum @ one hour stair enclosure
- o 1/2" water resistant gypsum at bathrooms
- o Brosco 8712 casing and 8688 baseboard trim, painted
- • Brosco 8627 casing at pre-hung doors
- o Yellow pine stair treads, plywood risers
- o (2) Brosco # 75 1 3/4" handrail @ each stair
- o 2x2 ceramic floor tile @ baths
- o 8x8 quarry tile @ kitchen and entry
- o 8x8 quarry tile @ fireplace hearth and surround
- • $12/yard floor covering allowance at recreation/dining halls
- o Formica kitchen and vanity tops with raised 4" backsplash

I. Equipment

- o Laminate faced kitchen and bath cabinets with C-pulls
- o Floor mounted laminate faced toilet compartments
- • Superior RD4300 zero clearance fireplace w/ outside air

J. Mechanical/Plumbing

- o New water service and meter
- o All-air gas heat with air conditioning optional
- o Ariston 4 gallon instant hot water at restrooms
- o Eljer "Newark" elongated toilets
- o Eljer "Correcto" urinal
- o Eljer "Hi-San" toilets @ H/P stalls
- o Eljer "Denise" self rimming china lavatory
- o Elkay PSR2522 and PSR3322 stainless steel sinks
- o Single lever chrome fittings @ sinks
- o Handicap plumbing fittings and accesories @ restrooms
- o Copper supply and PVC waste lines, vented per code
- o (1) frost proof exterior hose bibbs
- o (1) floor drain and hose bibb per restroom

K. Lighting/Electrical

- o City approved street lights and poles
- o New electric service
- o Bollard pathway lighting
- o Duplex outlets per code
- o (2) waterproof exterior outlets
- o Building standard recessed incandescent ceiling fixtures @ entry, hallways, kitchen and baths
- o Wall mounted fixtures 8' o.c. @ recreation and dining hall
- o Recessed incandescent exterior fixtures @ front and rear patio roof overhangs
- o Hard wired smoke detector's per code
- o Pre-wire for TV and telephone
- o Emergency fire alarm w/ ext. mounted sirens and central station monitoring as designated by fire department
- o Optional burglar alarm w/ contacts on accessible windows and doors and/or motion detectors

P&D Draft 6/21/89
Marked to show
changes from
6/20/89 draft

COMPREHENSIVE DEVELOPMENT AGREEMENT

This Comprehensive Development Agreement (the "Agreement") is made as of the ____ day of June, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts, acting by and through its Board of Selectmen, and Roy C. Smith, as Trustee of High Street PCRC Trust u/d/t dated March 5, 1985, recorded with the Middlesex South Registry of Deeds in Book 18611, Page 409 and the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust"). Roy C. Smith individually and as Trustee of the Trust, any corporation, partnership or other entity undertaking a development pursuant to the terms of this Agreement in which Roy C. Smith has an interest and any of their successors or assigns shall hereinafter be referred to collectively as the "Developer".

RECITALS

Reference is made to the following facts:

A. At a Special Town Meeting held in 1984, the Developer presented a written proposal (the "Development Proposal") with respect to the development of several parcels of land in the Town of Acton containing approximately 71 acres as more particularly described on Exhibit A attached hereto (the "Development Property"), seeking the approval of Town Meeting to designate the Development Property as a Planned Conservation Residential Community (PCRC) District pursuant to Section 9 of the Town Zoning By-Law. The Town Meeting made such a designation as to the Development Property.

B. By deed dated March 25, 1985, recorded with the Middlesex South Registry of Deeds at Book 16067, Page 278, Roy C. Smith, individually, acquired a portion of the Development Property consisting of an approximately 18 acre parcel of land as more particularly described in the deed thereto. Roy C. Smith, individually, conveyed this 18 acre parcel by deed dated October 8, 1987, recorded with said Deeds in Book 18611, Page 445, to Roy C. Smith, as Trustee of the Trust.

C. By deed dated October 8, 1987 from Norman R. Veenstra, recorded with said Deeds in Book 18611, Page 437, Roy C. Smith, as Trustee of the Trust acquired another portion of the Development Property consisting of three parcels of land containing approximately 39 acres more or less, as more particularly described in said deed.

D. By deed October 8, 1987 from Norman R. Veenstra, filed with said Registry District as Document No. 758060, and recorded with said Deeds in Book 1036, Page 179, Roy C. Smith, as Trustee of the Trust, acquired the balance of the Development Property consisting of a parcel of land containing approximately 14 acres more or less, as more particularly described in the deed thereto.

E. Roy C. Smith, as Trustee of the Trust, is the owner of record as of the date hereof of the Development Property.

F. The Developer agreed at public meetings held with the Town of August 25, 1987, and September 2, 1987, to develop the Development Property substantially in accordance with the terms and conditions of the Development Proposal as generally illustrated on a plan entitled "Overall Land Use Plan of Land in Acton Mass," dated October 16, 1984, and in accordance with the terms and conditions of a special permit to be issued by the Town acting through its Planning Board under the PCRC District, and in no other manner.

G. On October 9, 1987, the Developer and the Town entered into a Development Agreement (the "Prior Development Agreement"), a First Option Agreement and a Subordinated Option Agreement with respect to the Development Property, all of which are incorporated by reference herein. The Prior Development Agreement required the Developer and the Town enter into a Comprehensive Development Agreement upon the issuance of the special permit described in the preceding paragraph (F).

H. On March 4, 1989, the Town, acting through its Planning Board, approved, subject to certain terms and conditions, the Developer's application for a Planned Conservation Residential Community special permit filed with a plan entitled "Audubon Hill in Acton, Mass.," dated August 1, 1988 (the "Special Permit"). On March 15, 1989, the Town, acting through its Conservation Commission, issued to the Developer an Order of Conditions with respect to the Development Property.

I. The Developer and the Town now wish to coordinate the terms of all prior permits, conditions, orders and agreements by this Comprehensive Development Agreement to govern the relationship of the parties with respect to the Development Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I: GENERAL PROVISIONS

1.1 Definitions.

The following terms used in this Agreement shall have the meanings specified below:

Act: means Chapter 183A of the General Laws of Massachusetts, as it may be amended.

Affidavit of Compliance: means an affidavit executed as provided in Section 3.4.(e) hereof.

Affiliated Party: means as to any Person, (i) a member of the Immediate Family of such Person, (ii) the estate of any Person referred to in the preceding clause, (iii) the trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) and (ii), (iv) an entity of which a majority of the voting and/or benefical interest is owned by any one or more of the Persons referred to in the preceding clauses (i) through (iii), or (v) a Person who is an officer, director, trustee, employee, stockholder/beneficiary (15% or more) or partner of any entity which is a Person referred to in the preceding clauses (i) through (iv).

Agreement: means this Comprehensive Development Agreement, incorporating the Order of Conditions, the Special Permit and the Plan, as this Comprehensive Development Agreement may be amended from time to time.

Appraised Value: means, as to a Restricted Unit, the fair market value of the Restricted Unit as determined by a real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price reasonably established by the Developer. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

Approval Documents: means all documents required pursuant to the terms and conditions of this Agreement in

connection with the sale, conveyance or other transfer of a Restricted Unit, including an executed counterpart original of the purchase and sale agreement for the sale of any such Unit, Mortgage Lender's Certificate, a determination of the Maximum Resale Price of the Unit to be conveyed, and all Affidavits of Compliance which may be required.

Averitt Land: means that land more fully described in Exhibit B attached hereto and incorporated herein by reference.

Completion of Construction: means, as to any Phase or Subphase of the Project, that each of the following has occurred: (i) an architect duly licensed and qualified under the laws of the Commonwealth of Massachusetts has certified that such Phase or Subphase has been substantially completed in accordance with the plans and specifications therefor; (ii) the Town Designee has inspected such Phase and determined that such Phase is in compliance with the terms of this Agreement, the Special Permit and the Order of Conditions, as each may apply; and (iii) an authorized Town official has issued a certificate of occupancy, if one is required, for such Phase.

Condominium: means the Audubon Hill North and the Audubon Hill South Condominium (which shall include the Town of Acton Senior Center), or any Subphase thereof, as contemplated in the Plan, to be established according to the provisions of the Act and built in accordance with this Agreement, the Special Permit and the Order of Conditions.

Condominium Association: means the unit owners' association established pursuant to the Condominium Documents for the Audubon Hill North Condominium or the Audubon Hill South Condominium or both in order to govern the affairs of the Condominium.

Condominium Documents: means those documents required under the provisions of the Act to submit the Development Property to the condominium form of ownership to establish the Condominium, in compliance and in accordance with the provisions of the Act, forms of which are attached hereto as Exhibit J and incorporated herein by reference.

Conservation Administrator: means the Person designated from time to time and employed by the Town to act as the Conservation Administrator of the Town, or any Person acting in a successor position so designated by the Town.

Conservation Restriction: means the conservation restriction substantially in the form of Exhibit D that is to be placed on the Development Property by the Developer pursuant to the terms of this Agreement.

Construction Lender: means a bank, insurance company, savings and loan association, trust company or other institutional lender, or a noninstitutional lender which is approved in writing in advance by the Town, who holds a Construction Mortgage.

Construction Mortgage: means a mortgage on the Development Property given by the Developer to secure the payment of one or more loans which may be used only for the financing or refinancing of the construction of the Project in accordance with the terms of this Agreement, the Special Permit, the Order of Conditions and one or more construction loan agreements consistent with the aforesaid documents.

Development Property: means the real property upon which the Developer intends to construct the Project, as more fully described in Exhibit A attached hereto and incorporated herein by reference.

Developer: means Roy C. Smith as Trustee of the High Street PCRC Trust, Roy C. Smith individually, and any Affiliated Party of Roy C. Smith undertaking development pursuant to this Agreement and any successor or assign.

Eligible Purchaser: means a Senior Citizen who satisfies the criteria set forth in the Guidelines in effect at the time the Senior Citizen is ready and willing to purchase a Unit. In addition, the Town and the Acton Housing Authority shall also be deemed Eligible Purchasers.

First Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987 concerning the Option A Property, recorded with the Registry of Deeds at Book 18611, Page 447, and incorporated herein by reference.

Guidelines: means the program documents attached hereto as Exhibit E and incorporated herein by reference, as they may be amended from time to time by the Town, which establish the criteria by which an Eligible Purchaser shall be determined.

Immediate Family: means with respect to any Person, his or her spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law. grandchildren ?

Improvements: means those buildings, structures and other improvements, including without limitation landscaping and paving, which shall be constructed on the Development Property in accordance with the Special Permit, the Plan, the Order of Conditions and this Agreement.

Maximum Resale Price: means, as to any Restricted Unit, the price, as of a given date, equal to seventy five percent (75%) of the Appraised Value of such Unit.

Mortgage Lender's Certificate: means that certificate issued by a bank, savings and loan association, trust company, or other institutional lender regarding a prospective purchaser's eligibility for a mortgage loan under FNMA or FHLMC standards in accordance with Paragraph C.2. of the Guidelines, as they may be amended from time to time.

North Phase: means the Phase of the Project which includes the construction of (i) the "Northern Phase" (Units 101-128 130 or 132 _____) and (ii) the landscaping and other facilities appurtenant to such Units as contemplated in the Plan.

Option A: means the option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option A Property under the terms of the First Option Agreement.

Option B: means the subordinated option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option B Property under the terms of the Subordinated Option Agreement.

Option A Property: means that portion of the Development Property, more fully described on Exhibit C attached hereto and incorporated herein by reference excluding, however, any and all Units in the Project.

Option B Property: means that portion of the Development Property described on Exhibit F attached hereto and incorporated herein by reference.

Order of Conditions: means the Order of Conditions, DEQE File number 85-265, issued to Roy Smith, as Trustee of the Trust, by the Acton Conservation Commission pursuant to G.L. c.131, §40 on March 15, 1989, and incorporated herein by reference, and recorded with the Registry of Deeds at Book 19722, Page 505 and with the Registry District as Document No. 795846, which imposes certain terms and conditions on the development of the Project.

Person: means any individual, or general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, successors and assigns of such Person where the context so admits.

Phase: means a portion of the Project, as described in the Plan.

Plan: means a plan entitled "Audubon Hill, Acton, Mass.", dated August 1st, 1988, for land owned by High Street PCRC Trust, drawn by Acton Survey & Engineering, Inc., Gauchat Architects, Inc., and Carrol R. Johnson & Associates, Inc., consisting of 46 sheets and referenced as Exhibit 1 to the Special Permit.

Project: means the planning, construction, landscaping and all other related or similar development of the Development Property in accordance with the Plan, this Agreement, the Special Permit and the Order of Conditions, including, without limitation, the planning, construction and landscaping of the Condominium, the Improvements contemplated in Section 2.2 hereof and the Senior Center.

Registry of Deeds: means the Middlesex South Registry of Deeds.

Registry District: means the Middlesex South Registry District of the Land Court.

Restricted Unit: means a Unit subject to certain resale price restrictions, which restrictions are set forth in Article III hereof and in the Master Deed of the Condominium, and are incorporated herein by reference, for the benefit of the Town, its successors and assigns.

Security: means a letter of credit or similar secure financial commitment, the terms and conditions of which are acceptable to the Town, issued by a financial institution acceptable to the Town, provided by the Developer at the Developer's sole expense for the benefit of the Town.

Senior Center: means that portion of the Condominium's common areas and facilities which shall be constructed by the Developer as contemplated in the Plan, the Special Permit and the Order of Conditions and leased to the Town under the terms and conditions of a lease, attached as Exhibit H hereof and incorporated herein by reference, for use by the Town as a senior citizen's center.

Senior Citizen: means any natural Person fifty-five years of age or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a Unit to such Person.

South Phase: means that portion of the Project which includes construction of (i) the improvements to the Conservation Area, (ii) the Senior Center, (iii) the "Southern Phase" (units 1-32 and 34,36,38,40,42,44,46 and 48) and (iv) the landscaping, utilities, access roads and other facilities appurtenant to the Senior Center and the aforesaid Units as contemplated in the Plan.

Special Permit: means the Planned Conservation Residential Community Special Permit granted on March 4, 1989, by the Acton Planning Board to Roy C. Smith, as Trustee of the Trust subject to and with the benefit of certain conditions, modifications, waivers and limitations, received and filed by the Acton Town Clerk on March 6, 1989 and recorded with the Registry of Deeds at Book 19722, Page 511 and the Registry District as Document No. 795847.

Subordinated Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987, concerning the Option B Property, recorded with the Registry of Deeds at Book 18611, Page 480 and with the Registry District as Document No. 758067, incorporated herein by reference.

Subphase: means any portion of any Phase, as described in the Plan.

Town: means the Town of Acton, acting through its Board of Selectmen.

Town Counsel: means Norman P. Cohen, Esquire, Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108, or such successor counsel, duly admitted to the practice of law in the Commonwealth of Massachusetts, as is designated by the Town.

Town Designee: means any person or entity designated by the Town in accordance with this Agreement to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or any designee of the Developer. The Town hereby designates the Town Manager, or his or her assignee as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

Unit: means a condominium unit so designated in the Master Deed of the Condominium.

Unrestricted Unit: means a Unit not subject to the restrictions contained in this Agreement with regard to

resale price and purchase eligibility imposed on Restricted Units.

1.2 General Provisions.

(a) this Agreement shall supercede the Prior Development Agreement recorded with the Registry of Deeds at Book 18611, Page 447 and with the Registry District as Document No. 758064. Upon execution of this Agreement and its recording with the Registry of Deeds and the Registry District, the Town and Developer shall execute a document in recordable form releasing the Prior Development Agreement and a Release Agreement between Roy C. Smith, as Trustee of the Trust and the Town, dated October 9, 1987 and recorded with the Registry of Deeds in Book 11684, Page 367 (the "Prior Release Agreement"), which Prior Development Agreement and Prior Release Agreement shall thereupon be void and of no further effect. Promptly following execution of the aforesaid release, the Developer shall record, at its own expense, said release with the Registry of Deeds and the Registry District.

(b) Upon the Completion of Construction of the entire Project in accordance with (i) the terms and conditions of this Agreement, the Special Permit, the Plan, the Order of Conditions and any subsequent agreements or permits between the Town and the Developer concerning the Project, and (ii) all applicable laws, ordinances, bylaws and codes, the Town agrees to execute a release of this Agreement in recordable form, except for those terms and conditions contained in Sections 3.3 and 3.4 hereof concerning the sale and resale of Units to the extent that such terms and conditions are not incorporated fully into the Condominium Documents, ~~in recordable form~~, which the Developer may record at its sole expense with the Registry of Deeds and the Registry District. Notwithstanding any provision of the foregoing to the contrary, upon the release of this Agreement, the following independant documents and agreements shall remain in full force and effect according to their terms and the aforesaid release shall not alter or affect any of the following documents and agreements: the Conservation Deed Restriction (Exhibit D), the Lease of the Senior Center (Exhibit H), the Easement to Averitt Land (Exhibit I), the Condominium Documents (Exhibit J) and the Purchase and Sale Agreement (Exhibit K).

ARTICLE II: DEVELOPMENT

2.1. The Development.

The Developer covenants, promises and agrees, for itself, its successors and assigns, to develop the Project as follows:

(a) to undertake and complete the development of the Project in accordance with this Agreement, the Plan and any plans and specifications referred to in the Special Permit;

(b) to comply in all respects with the terms and conditions of the Special Permit, the Order of Conditions and all other agreements between the Town and the Developer; and

(c) to comply with all building, zoning and other applicable laws, ordinances and regulations.

The Project shall be completed to the satisfaction of the Town on or before the date which is three (3) years from the date of this Agreement, provided, however that such date may be extended for up to one (1) year by the Town Planning Board as provided in the Special Permit.

2.2. Conservation Land.

(a) The Developer acknowledges and agrees to subject the ~~Option A~~ Development Property to the Conservation Restriction in the form attached hereto as Exhibit D, which Conservation Restriction shall be recorded against the Development Property prior to the commencement of construction of any Improvements or any portion of the Development Property. The Developer shall record the Conservation Restriction within fourteen (14) days after the date of this Agreement.

(b) The Developer shall grant to the Town an easement appurtenant to the Averitt Land, a perpetual easement for ingress and egress over, under and across the location shown generally on the Plan as "Grav. Drive" and and in the form of Exhibit I attached hereto (the "Access Easement"). Use of the Access Easement shall be for all purposes for which public ways may now or hereafter be used in the Town of Acton. Such easement shall be granted prior to the commencement of construction of any of Units.

(c) The Developer will construct, in accordance with procedures required by the Town Engineering Administrator, at the Developer's sole expense, (i) a gravel road within the area of the Access Easement for the passage of vehicles from the area shown as "Proposed 18 Ft. Drive" on the Plan to the Averitt Land, and (ii) a five car gravel parking lot on the aforesaid Averitt Land at a location to be designated by the Town (collectively, the "Gravel Drives").

(d) The Developer will, at its sole expense design and lay out a system of trails (the "Trails") over the existing Averitt Land and clear a burnt area of that land, pursuant to standards, conditions and procedures required by the Conservation Administrator.

(e) The Developer shall present to the Town no later than thirty (30) days from the date hereof, a survey prepared by a registered land surveyor and approved by the Conservation Administrator, indicating the location of the Access Easement, Gravel Drives, and the Trails. The Developer shall obtain the Conservation Administrator's approval of the location of each of the Access Easement, the Gravel Drives, and the Trails.

(f) The Developer shall obtain Security running to the Town for the full cost, as determined by the Conservation Administrator, of the Improvements contemplated in this Section 2.2.

(g) The Developer shall complete the Improvements described in this Section 2.2 to the satisfaction of the Conservation Administrator on or before the completion of the South Phase or December 31, 1990, whichever occurs sooner provided, however, that if completion of such Improvements is delayed due to action or inaction attributable to the Town, such date shall be extended by a period equal to the delay attributable to the Town.

(h) Within ten (10) days after (i) the Developer has given the Town Designee notice that the Developer has recorded the Conservation Restriction and supplied the Town Designee with a certified copy of the Conservation Restriction containing all appropriate recording information and (ii) the Security is issued, the Town shall execute, in a form suitable for recording, a release of the First Option Agreement and deliver such release to the Developer. The Developer at its sole expense shall promptly record such release with the Registry of Deeds and the Registry District and provide the Town with a certified copy of such release as recorded.

(i) Upon the completion of the Improvements contemplated under this Section 2.2., the Developer shall give the Conservation Administrator written notice of such completion and within ten (10) days of such notice, the Conservation Administrator shall inspect the Improvements and the Conservation

Administrator shall determine whether these Improvements comply with the terms and conditions set out in Section 2.2 of this Agreement. If the Conservation Administrator determines that the Improvements are acceptable to the Town, the Town shall execute a release of the Security provided pursuant to Section 2.2(h), above and deliver such release to the Developer.

(j) If the Conservation Administrator disapproves of any of the Improvements described in this Section 2.2, he or she shall so notify the Developer, in writing, specifying the reasons therefor. In the event of such disapproval, the Developer shall promptly correct any defects noted by the Conservation Administrator and the Conservation Administrator shall then reinspect said Improvements as provided in Section 2.2(i) above. Should the Developer fail to correct any such defect within ninety (90) days following the receipt of notice, the Town may, at its option, proceed to cause such defect to be corrected and draw upon the Security provided pursuant to Section 2.2(h) above for payment therefor.

ARTICLE III: RESTRICTION ON CONDOMINIUM DEVELOPMENT

3.1. Establishment of Condominium.

(a) Concurrent with the execution of this Agreement, the Developer shall deliver to the Town Designee, with a copy to the Town Counsel, the Condominium Documents which shall be attached hereto as Exhibit J and incorporated herein by reference. The forms of the Condominium Documents, including without limitation, the declaration of trust of the Condominium trust, the by-laws of the Condominium trust and the master deed and Unit deeds shall be subject to the approval of the Town. The Condominium Documents shall be consistent with the provisions and intent of this Agreement. The Condominium shall be comprised of seventy (70) residential Units plus the Senior Center.

The Condominium Documents shall provide that the Developer shall not exercise its voting rights under the Condominium Documents to amend any of the provisions of the Condominium Documents to be inconsistent with this Agreement without the prior written consent of the Town.

The approval by the Town of each amendment or revision of the Condominium Documents shall be conclusively established by an endorsement thereon signed and acknowledged by the Town Designee or any member of the Board of Selectmen of the Town stating that such document has been approved by the Town, except that only the first Unit deed and not subsequent Unit deeds need contain such endorsement.

(b) Following execution of this Agreement, the Developer at its sole expense shall record the declaration of the Condominium trust, the by-laws of the Condominium and the Condominium master deed, all as approved by the Town, and take all other actions necessary to lawfully and validly submit the Development Property to the provisions of Chapter 183A of the Massachusetts General Laws, on or before the date thirty (30) days after Completion of Construction and in no event later than July 31, 1992 or as extended pursuant to this Agreement and the Special Permit. The Developer shall promptly deliver to the Town copies of all of the Condominium Documents as recorded, indicating the place of recording of same in the Registry of Deeds and the Registry District.

3.2. Improvements on the Development Property.

(a) Except as otherwise expressly provided in this Agreement, no building, structure or other improvement shall be constructed or maintained on the Development Property, nor any alteration made to the exterior of any building located on the Development Property except as contemplated or permitted by the terms of the Special Permit, the Plan, the Order of Conditions and this Agreement.

(b) The Developer shall commence construction of the Project by constructing the South Phase. Excepting construction of access roads, utilities and preliminary site preparation work, the Developer shall not commence construction of any subsequent Phase of the Project until the Completion of Construction of twenty seven (27) Units in the South Phase.

3.3. Sale of Condominium Units by Developer.

(a) Every Unit deed conveying an interest in a Unit shall contain a statement that such Unit is subject to the terms and conditions of Article III hereof, and shall contain a reference to the place of

recording of this Agreement with the Registry of Deeds and the Registry District.

(b) Every sale, assignment, resale or other conveyance of an interest in every Unit whether by the Developer or its successors, heirs or assigns, for a period of forty (40) years from the date of this Agreement, shall be to (i) a Senior Citizen, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family provided that the Unit so purchased shall be the principal residence of such Senior Citizen, and his or her spouse, if any. Each Senior Citizen or Senior Citizen and spouse acquiring an interest in a Unit shall utilize such Unit as their principal residence. Each Unit deed shall contain a statement incorporating the provisions of this Section 3.3(b).

(c) At least thirty-five percent (35%) of the Units constructed on the Development Property, shall be Restricted Units, sold by the Developer subject to the resale restrictions described in this Agreement and the Guidelines attached hereto. These restrictions shall be incorporated into the Condominium's master deed and shall inure to the benefit of and be enforceable by the Town, its successors and assigns.

(d) Without limitation the Developer will at all times use its best efforts to market and sell all Units.

(e) Every unit deed conveying a Restricted Unit or an interest therein shall recite the resale restrictions described in Section 3.4, and contain a statement that such Unit is a Restricted Unit subject to the provisions hereof and of the Special Permit, and shall include a reference to the place of recording of such documents with the Registry of Deeds and the Registry District.

(f) The Developer agrees to convey five (5) Units to the Acton Housing Authority (the "AHA") at the election of the AHA for the price of sixty five thousand dollars ($65,000) for each Unit on the terms and conditions set forth on the purchase and sale agreement attached hereto as Exhibit K, subject to approval by the Executive Office of Community Development. The Developer further agrees that three (3) of the Units referred to in the previous sentence shall be constructed as part of the South Phase of the Project and two (2) of such Units shall be constructed as part of any

subsequent Phase of the Project. The Units to be so conveyed have been designated in five (5) Right of First Refusal agreements as executed by the Developer on _____, 1989 and attached hereto as Exhibit G. Upon execution of this Agreement, the terms and conditions of this Agreement and the attached Exhibit K shall govern the sale of such Units and the aforesaid five Right of First Refusal Agreements shall thereupon be void and of no further effect. Sixty (60) days prior to the estimated Completion of Construction of each Unit to be conveyed to the AHA, the Developer shall give the Town Designee and the AHA notice of the estimated date of the Completion of Construction of such Unit. The date of conveyance of the deed to each such Unit shall be thirty (30) days following the Completion of Construction of such Unit. The Developer and the Town agree that time shall be of the essence of this agreement to convey the aforesaid Units. The aforesaid Units shall be Restricted Units for the purposes of this Agreement.

(g) The Developer may only sell, convey or otherwise transfer a Unit for which the Developer has received a Certificate of Occupancy. Notwithstanding the foregoing sentence, the Developer may execute a Purchase and Sale Agreement for a Unit prior to receiving a Certificate of Occupancy. Until such time as Completion of Construction of the Senior Center has occurred, the Town shall grant Certificates of Occupancy only for Units constructed in the South Phase in conformity with this Agreement. The Town shall grant no further Certificates of Occupancy with respect to Units in the Project until the Completion of Construction of twenty seven (27) Units in the South Phase and the Senior Center has occurred.

3.4. Conditions for Resale.

(a) Age. For a period of forty (40) years from the date of this Agreement, no Unit or any interest therein shall be sold, assigned, conveyed or otherwise transferred, and no attempted sale, assignment, conveyance or other transfer shall be valid, unless the Person or Persons acquiring such Unit or interest shall be (i) one or two Senior Citizens, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family and such Senior Citizen or Senior Citizen and his or her spouse shall agree to utilize such Unit as their principal residence.

(b) Price. For a period of forty (40) years from the date of this Agreement no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit for and in connection with the transfer of such Restricted Unit, is equal to or less than the Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such Unit. In the event that the price restrictions contained herein are not extended as provided in the Condominium Documents or are withdrawn prior to the expiration of such forty (40) year period, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Acton Community Housing Corporation, or such successor entity as is designated by the Town Board of Selectmen, to be held and invested in a trust as directed by the Town Board of Selectmen for the benefit of the Town's Senior Citizens. Upon payment of such excess sum to said trust, the Town Designee shall execute a certificate, in recordable form, acknowledging receipt of such monies. The interest on and corpus of said trust shall be applied only as directed by the Town Board of Selectmen.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted Unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Rental Prohibition. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Agreement. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by the owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of: the owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual

interest on the owner's downpayment; the ~~useful~~ cost of improvements, repairs and the like made by the owner to the Unit, amortized over their reasonable useful life; and any utility fees incurred by the owner in connection with the Unit.

Prior to the rental of any Restricted Unit, the owner of said Unit shall provide the Town Designee with evidence, reasonably satisfactory to the Town Designee, sufficient to substantiate the preceding requirements of this Section 3.4(d).

(e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit by the Developer, its successors or assigns, or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Person or Persons contemplating the purchase of the Unit (the "Prospective Purchaser"), identifying the Unit in question, the Seller and the Prospective Purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certification thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of a date not later than the date set for closing of the proposed sale.

(f) Certificate from Town: At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at its mailing address set forth on the first page of this Deed or such other address for the Town as shall appear of

record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or re-sale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(i) a certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

(a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Deed; or

(b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income of the Prospective Purchaser, and the sale or re-sale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the

Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any Restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in subsection (i) above referring to such Unit and such certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 3.4(f)(i)(a) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Unit pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other

rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

3.5 Use.

(a) Excepting only the Senior Center, the use of each Unit shall be restricted to residential housing only. Furthermore, no Unit shall be the principal residence of more than two (2) Persons who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Condominium Association, a member of the Unit owner's Immediate Family (other than spouse) may reside in such Unit upon a showing of good cause. Overnight guests may be allowed as provided in the Condominium Documents.

(b) No Unit shall be rented, licensed, or sublet except to Senior Citizens or a Senior Citizen and spouse and, furthermore, a Restricted Unit shall be rented, licensed or sublet only as provided in Section 3.4.(d), above.

ARTICLE IV. SECURITY FOR PERFORMANCE OF DEVELOPER'S OBLIGATIONS

4.1. As security for the performance of Developer's obligations hereunder, under this Agreement, the Special Permit, the Order of Conditions, and any other covenant and agreement with the Town, the Developer has done or shall do the following:

(a) Post Security with the Planning Board. The purpose of such Security is to ensure that the Developer will construct all Improvements pursuant to Section 2.2 in accordance with the terms and conditions of this Agreement, the Special Permit and the Order of Conditions. The Planning Board shall determine the amount of the Security, the termination date of the Security, and shall administer the Security.

(b) Pursuant to the First Option Agreement, the Developer has granted the Town Option A which, for

a period of forty years, grants the Town the exclusive option to purchase the Option A Property and the improvements thereon, if any, and any rights appurtenant thereto for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 hereof.

(c) Pursuant to the Subordinated Option Agreement, the Developer has granted the Town the exclusive option for a period of forty years to purchase all or any portion of the Option B Property and the improvements thereon, if any, and any rights appurtenant thereto, for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 of this Agreement.

(d) The First Option Agreement and the Subordinated Option Agreement shall be merged into and made a part of this Agreement and the Town and Developer agree to execute and record with the Registry of Deeds and the Registry District, at the Developer's sole expense, an instrument releasing such Option Agreements concurrent with the execution and recording of this Agreement, provided that neither the First Option nor the Subordinated Option shall be released, in whole or in part, except in accordance with the provisions of this Agreement.

4.2. Encumbrances/Subordination. Developer agrees that prior to the Completion of Construction of the entire Project, Developer will not voluntarily convey, transfer, or otherwise dispose of the Development Property; and Developer agrees that it will not mortgage, pledge or refinance the Development Property in such a manner as would prevent, or interfere with performance under this Agreement by Developer. Notwithstanding the foregoing, the Town hereby acknowledges that Option B shall be subject and subordinate to a certain Mortgage Agreement dated October 9, 1987, between Developer and Shawmut Bank, N.A. recorded with the Registry of Deeds at Book 18611, Page 473 and the Registry District as Document No. 758066, and to the interest of any other Construction Mortgage.

ARTICLE V. SENIOR CENTER

5.1 Construction of Senior Center. The Developer shall construct or cause to be constructed as a common area and facility in the Condominium a Senior Center on the Development Property as contemplated in and in conformity with the Plan, the Special Permit, this Agreement and the Order of Conditions. The Senior Center shall be constructed

as part of and concurrently with the South Phase and in no event shall Completion of Construction of the Senior Center be later than one hundred eighty (180) days after the first building permit is issued for the North Phase.

5.2 Transfer to Town. Upon the Completion of Construction of the Senior Center, the Developer shall execute, deliver to the Town and record with the Registry of Deeds and/or the Registry District, as appropriate, at the Developer's sole expense, a lease between the Town and the Condominium Association for the Senior Center upon the terms and conditions contained in the Lease attached as Exhibit H, incorporated herein by reference (the "Lease"). Such Lease and the Condominium Documents shall provide that in no event shall the Town be required to pay any form of condominium or common fees, special assessments or the like.

5.3 Maintenance of Senior Center. The Developer, or, following its creation, the Condominium Association, shall be responsible for the maintenance and repair of the exterior of the Senior Center (including, without limitation, the roof and load bearing walls) and the grounds surrounding it at its sole expense. The Condominium Documents shall provide for a sufficient budget and reserves for such maintenance. The Town shall be responsible for maintaining the interior of the Senior Center at its own expense. The Town shall establish reasonable standards for all such maintenance. In the event that the Town alters or expands the Senior Center, for example, by expanding the kitchen or the Senior Center's sewage demands, such action shall be contingent upon Town approval and authorization of each such action and shall be at no cost to the Condominium Association.

5.4 Insurance.

(a) Until the Completion of Construction of the Senior Center and execution of the Lease, the Developer or the Condominium Association shall keep the Senior Center insured in accordance with Article VII of this Agreement.

(b) Upon Completion of Construction and execution of the Lease, the Town shall keep the Senior Center insured as provided in the Lease.

ARTICLE VI. TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

6.1. No Transfer. The Developer agrees that it will not, prior to conveyance of all Units in the Condominium to unaffiliated third parties, including the conveyance of the Senior Center to the Town or its nominee, make or suffer to be made any assignment or any other transfer of any of its interest in the Property or any portion thereof or in this

Agreement, other than sales of Units in accordance with the provision of this Agreement, except with the prior written approval of the Town. In order to receive such approval by the Town, a transferee or transferees shall have expressly assumed, for themselves and their successors and assigns, by written instrument satisfactory to the Town, all obligations of the Developer provided in this Agreement, and all legal documents employed in affecting a transfer pursuant to this Section 6.1 shall have been submitted to and approved by the Town; provided, however, that Developer may grant one or more Construction Mortgages on the Property to secure the payment of any loan or loans obtained by the Developer from a Construction Lender and provided further, that Developer may grant a second mortgage to the Bank of New England which is subordinate to this Agreement, the First Option and the Subordinated Option. The Developer shall deliver a copy of any Construction Mortgage, construction loan agreement and the aforesaid second mortgage to the Bank of New England to the Town Designee upon the execution of each such document.

The fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have expressly assumed all of the obligations of the Developer hereunder and all conditions and restrictions contained herein, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Town of or with respect to any rights, conditions or restrictions with respect to the Development Property or the construction of the Improvements thereon; it being the intent of this section, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership of the Development Property shall operate, legally or practically, to deprive or limit the Town of or with respect to any such rights, conditions or restrictions provided in or resulting from this Agreement with respect to the Development Property and the construction of the Improvements thereon that the Town would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Town to the contrary, no such transfer or approval thereof by the Town shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

6.2. Construction Mortgage; Rights and Obligations of Construction Lender:

(a) No Construction Lender shall be deemed to have assumed or to be bound to perform the obligations of the Developer hereunder by reason of having acquired an interest in the Development Property for security purposes except as provided herein. A Construction Lender shall have the right to perform any action in order to cure or make good any default in the performance of the Developer's obligations under this Agreement, and the Town shall accept such performance by the Construction Lender to the same extent as if the same were performed by the Developer. If the Construction Lender shall acquire or succeed to the Developer's interests in the Development Property by reason of foreclosure or similar remedial action or upon conveyance of the Development Property in lieu of foreclosure, the Construction Lender shall assume only the obligations of the Developer accruing hereunder during the period in which the Construction Lender holds possession of the Property or owns the Developer's interest therein. The Town agrees that the Construction Lender may sell, assign or otherwise dispose of the Developer's interest to which it has so succeeded or which it has so acquired, provided that the transferee shall agree With the Town, in written form acceptable to the Town, to take such interest subject to all covenants, agreements and obligations of the Developer hereunder. Upon any such sale, assignment or disposition, such Construction Lender shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement after the effective date of such sale.

(b) If a Construction Lender shall by written notice to the Town notify the Town of the execution, delivery and recording of a Construction Mortgage, and of the name and address of the Construction Lender for notice purposes, and of the recording reference of its Construction Mortgage, and with such notice shall furnish to the Town a true copy of its Construction Mortgage, the Town agrees that from the date of such notice until such Construction Mortgage shall be discharged or released of record, the following provisions shall apply:

(i) There shall be no cancellation, surrender, termination or modification of this Agreement by joint action of the Town and the Developer, without in each case first securing the prior written consent of each such Construction Lender;

(ii) The Town shall, upon giving to the Developer any notice of default under this Agreement, simultaneously give a copy of such notice to each such Construction Lender, and no notice of default given to the Developer shall be effective until a copy thereof has been given to each such Construction Lender. Whenever pursuant to this Agreement notice is to be given to a Construction Lender, a notice addressed to such Construction Lender at its address specified in accordance with the foregoing provisions of this section and otherwise complying with the terms of the notice provisions of this Agreement shall conclusively be treated as having been "given" within the meaning of the respective provisions hereof calling for notice to a Construction Lender;

(iii) Each Construction Lender shall have the same period after such notice of default has been given to such Construction Lender, for remedying any default of the Developer in performance of any of its obligations hereunder or causing the same to be remedied, as is given the Developer after the giving of such notice to the Developer, plus an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is continuously prosecuted with diligence, and the Town shall accept such performance by such Construction Lender as if performed by the Developer.

(iv) In the case of any such default by the Developer which is not susceptible of being cured by such Construction Lender, the Town agrees that it will take no action to obtain specific performance of this Agreement or to effect a termination of this Agreement by reason of such default without first giving to each such Construction Lender a reasonable period of time after notice under Subsection 6.2(b)(iii) either to obtain possession of the Development Property (including possession by receiver) and to cure such default, in the case of a default which can be cured when such Construction Lender has

obtained possession, or to institute foreclosure proceedings and to complete such proceedings or otherwise to acquire the Developer's interest, in the case of a default which cannot be cured by such Construction Lender without first obtaining the interest of Developer in the Development Property; provided, however (1) that such Construction Lender shall not be required to continue such possession or to continue such foreclosure or other proceedings if said default shall be cured, (2) that the period for obtaining possession or acquiring the interest of the Developer by foreclosure or otherwise, as the case may be, shall be extended for any period not to exceed six months during which such action is enjoined or stayed by a court of competent jurisdiction, (3) that such Construction Lender shall continue good faith efforts to perform all of the Developer's other obligations under this Agreement which are susceptible of being performed by such Construction Lender during the period of such forbearance, and (4) that nothing herein shall require any such Construction Lender to begin or continue such possession or foreclosure or other proceedings or preclude the Town from exercising (subject to the provisions of this Article VI) any rights or remedies under this Agreement with respect to any other defaults by Developer during the period of such forebearance;

(v) In the event of the termination of this Agreement for any reason, or in the case of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, the Town agrees to enter into a new agreement with the Construction Lender effective as at the date of such termination, rejection or disaffirmance, upon all the covenants and agreements, terms, provisions and limitations contained in this Agreement (including, without limitation, this section), provided that such Construction Lender shall, in writing, request the Town to enter into such new agreement within sixty (60) days after the effective date of such termination, rejection or disaffirmance. The provisions of this clause shall survive the termination, rejection or disaffirmance of this Agreement

and shall continue in full force and effect thereafter to the same extent as if this clause were a separate and independent agreement, and during the period ending 60 days after the effective date of the termination, rejection or disaffirmance of this Agreement, any such Construction Lender may quietly enjoy the Property without hindrance by the Town or any person or party claiming by, through or under the Town.

(vi) Within thirty (30) days after receiving a written request so to do from any such Construction Lender, the Town shall deliver to such Construction Lender a statement, certified by an authorized official, stating either (1) that this Agreement is in full force and effect and no default hereunder has occurred and is then continuing, or (2) that this Agreement is then in default, specifying the nature and status of such default. If such statement is not delivered by the Town to the Construction Lender so requesting it within thirty (30) days after such request, such Lender may conclusively assume that this Agreement is in full force and effect and that no default hereunder has occurred and is then continuing.

ARTICLE VII. INSURANCE

7.1. Insurance Coverage:

(a) The Developer or the Condominium Association shall, until the Completion of Construction of the entire Project and establishment of the Condominium, keep the Development Property, any buildings and improvements now or hereafter situated on the Development Property, and all of the insurable property and equipment in respect of the Development Property insured by fire and extended coverage insurance and builder's risk insurance to the same extent and amount which is normally required by institutional mortgagees for similar property and equipment. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than the full insurable replacement value of the Development Property (other than land and foundations) and equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible

insurance companies authorized to do business in Massachusetts, and loss thereunder shall be payable to the Developer, the Construction Lender, and to the Town as their interests may appear.

The Developer shall also maintain in full force from the date upon which the Developer first enters the Development Property for any reason, and thereafter until the Completion of Construction of the entire Project a policy of comprehensive public liability insurance, including the so-called broadening endorsement (i.e., broad form) written on an occurrence basis, insuring against all claims for injury to or death of persons or damage to property on or about the Development Property or arising out of the use of the Development Property and under which the Town, and such other persons as may be set forth in a notice given from time to time by the Town, any Construction Lender and the Developer are named as insureds, as their respective interests appear, each with the same effect as if separately insured. The minimum limits of liability of such insurance shall be: Bodily injury - $1,000,000 per occurrence and in the aggregate over the term of the policy, and Property Damage - $500,000 per occurrence. The Construction Lender shall have the right from time to time to increase such minimum limits upon notice to the Developer, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like property in the greater Boston area.

Furthermore, the Developer shall obtain appropriate Worker's Compensation insurance.

(b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

(c) Certificates of such policies and renewals thereof shall be filed with the Town on or about the effective date thereof.

7.2. Town May Procure Insurance if Developer Fails To Do So:

In the event the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Town at its option may, without limiting any other rights or remedies available to the Town, procure or renew such

insurance, and all amounts of money paid therefor by the Town shall be payable by the Developer to the Town with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the Town to the date of payment thereof by the Developer. Ten (10) days prior to procuring or renewing any such insurance, the Town shall notify the Developer or the Condominium Association, whichever is the named insured, of its intention to procure or renew such insurance. In the event that the Developer or Condominium Association, as appropriate, has not provided the Town with evidence satisfactory to the Town Designee of such insurance within five (5) days of such notice, the Town may proceed to procure such insurance. The Town shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by the Town. In the event the Town has not received payment from the Developer for the cost of any such insurance procured or renewed by the Town, plus interest accrued within twenty (20) days from the giving notice of notice by the Town to the Developer, the Town shall have a continuing lien against the Development Property for such amounts and shall be entitled to record such lien against the Development Property.

7.3. Developer's Obligations With Respect To Restoration And Reconstruction:

(a) Whenever any Improvement, or any part thereof, constructed on the Development Property shall be damaged or destroyed prior to Completion of Construction of the entire Project and establishment of the Condominium for the entire Project, lease of the Senior Center to the Town, and thereafter until all Units have been sold by the Developer to Persons who are not Affiliated Parties of the Developer, the Developer shall (to the extent permitted under the Condominium Documents, if the Condominium shall have been established at such time, and with the consent of the Construction Lender) proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvement, shall be deposited in a separate account of the Developer or of any Construction Lender.

(b) The insurance money and any other proceeds so collected, to the extent such proceeds are available to the Developer, shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been

destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction in accordance with the approved plans and specifications referred to in the Special Permit to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any Construction Lender, and subject to the Condominium Documents if the Condominium shall have been established at such time.

(c) Subject to the provisions of the Condominium Documents if the Condominium shall have been established at such time, the Developer, with the written approval of the Town and any Construction Lender, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and, in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be paid to the Developer, subject to the requirements of Article V with respect to insurance proceeds arising out of damage to or destruction of the Senior Center, and subject to the rights of any Construction Lender. In such event, the covenants and restrictions contained in the Deed shall terminate as to those Improvements or portions thereof which have been damaged or destroyed and not reconstructed or restored.

(d) Developer shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been so destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any Construction Lender (or, if the conditions then prevailing require a longer period, such longer period as the Town may reasonably approve in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within eighteen (18) months after the start thereof.

ARTICLE VIII. RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A BREACH BY DEVELOPER

8.1. Failure by Developer to Complete Construction, Establish the Condominium or Discharge Encumbrances; Unauthorized Transfers of Interest:

(a) If the Developer shall fail to perform its obligations under this Agreement with respect to commencement and completion of construction of Improvements in accordance herewith and with the Special Permit, the Plan and the Order of Conditions; or

(b) If the Developer shall fail to establish the Condominium as provided in Section 3.1 or shall employ for such purpose any procedure or document not in accordance with this Agreement or approved in writing by the Town; or

(c) If the Developer shall place or suffer to be placed on the Development Property any encumbrance or lien not expressly permitted by this Agreement or authorized in writing by the Town which is not discharged within fifteen (15) days after the Developer receives notice of such encumbrance or lien, unless such encumbrance or lien cannot be discharged within such fifteen-day period, in which case the Developer shall commence to discharge such encumbrance or lien promptly within such fifteen (15) day period and thereafter continuously and diligently complete the discharge of the same; or

(d) If there is any transfer of the Development Property or any part thereof or interest therein in violation of this Agreement, or if the Developer shall fail to perform any other obligation under this Agreement;

Then the Town or Town Designee shall provide Developer with written notice of such noncompliance, which notice may be recorded.

Subject to the provisions set out below, and in the event that Developer fails to cure such noncompliance within sixty (60) days after receipt of notice of noncompliance unless such noncompliance cannot be cured within such sixty day period, in which case the Developer shall commence to cure such noncompliance within such sixty (60) day period and thereafter continuously and diligently complete the cure of the same, the Town has the right to exercise either Option A or Option B, or both options, as provided in this Agreement. Notwithstanding the foregoing, no failure of the Town to

exercise Option A or Option B or both following a notice of noncompliance as set forth above, shall be construed as a waiver of any rights of the Town to exercise Option A or Option B or both under this Agreement;

The Town shall have the right to exercise Option A or Option B or both by a written notice given by the Town to Developer on or before the earlier to occur of October 9, 2027 or the date of recording of an instrument signed by the Town terminating either such Option. Such written notice shall specify which option the Town is exercising. The Developer shall deliver the deed to the property specified in the written notice to the Town on or before the sixtieth (60th) business day following the determination of the purchase price as set forth in Section 8.3 below, hereinafter referred to as the Closing Date.

After the Town has received written notice from the Developer of the existence of an institutional lender holding a first or second mortgage of record on all or any portion of the Development Property in accordance with the provisions of Article VI hereof, the Town shall send copies of all notices of noncompliance under this Article VIII to such institutional ~~first~~ mortgagee of record, and each such institutional mortgagee shall have the right concurrently with Developer to cure any noncompliance. The curing of such noncompliance by any such institutional mortgagee of record shall be treated as performance by the Developer, but nothing herein shall be deemed to impose an obligation on any such institutional mortgagee of record to cure any noncompliance under this Article VIII.

8.2. Zoning. In the event that the exercise of Option A and the acquisition of the Option A Property by the Town would create a nonconformity as to zoning for the Developer's approved development of the Development Property as set forth in this Agreement, the Town shall have no right to exercise Option A to purchase the Option A Property unless, within one hundred and eighty (180) days of its notice to the Developer of noncompliance with this Development Agreement or other permits, approvals or agreements as set forth in Subsection 8.1(a) above, the Town's Zoning Board of Appeals shall have granted a variance or such other zoning relief as may be necessary to cure the nonconformity created by the exercise of Option A and shall have followed the necessary procedures to grant and implement such variances or other zoning relief (which may, in some instances require taking a vote at a Town meeting).

8.3. Purchase and Sale Agreement. As soon as possible after the exercise of either Option, the Developer and the Town shall enter into a purchase and sale agreement substantially in the form of the attached Exhibit L, which agreement shall

govern the consummation of the conveyance of the appropriate Option Property and shall incorporate the terms and conditions of this Agreement, including without limitation the Closing Date and Purchase Price. The Town and Developer agree that time shall be of the essence of this Agreement. The purchase price of the Option A Property, or the Option B Property, as the case may be, shall be the fair market value of such property as of the date of the exercise of the option pertaining to such property. In the event that the Town and the Developer cannot agree in writing on such purchase price within ten days of the exercise of either Option then the purchase price of either the Option A Property or the Option B Property, as the case may be, shall be determined by appraisal of the fair market value of such property as of the date of the exercise of the option as follows. Within twenty days of the Town's exercise of either Option A or Option B, or both, the Town and the Developer shall each designate an impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts, to determine the fair market value of the Option A Property or the Option B Property. The expense of each appraiser shall be the responsibility of the party designating the appraiser. The unanimous written decision of the two appraisers so chosen shall be conclusive and binding upon the Developer and the Town. If the two appraisers shall fail to reach a unanimous written determination as to the purchase price within thirty days, the two appraisers shall designate a third impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts. The expense of the third appraiser so selected shall be divided equally between the Town and the Developer. The written decision of a majority of the three appraisers so selected shall be rendered within thirty days and shall be conclusive and binding on the Town and the Developer as to the purchase price.

8.4. Termination of Option A. Option A may be terminated in advance of its scheduled expiration date solely pursuant to Section 2.2 hereof and in no other manner.

8.5. Termination of Option B. Option B shall be terminated as follows. Upon the issuance of the first bulding permit for the South Phase, the Town shall execute a release, in recordable form, with respect to all of the property covered by the Subordinated Option, except for that portion of the Development Property on which the North Phase will be constructed. The first building permit for the South Phase shall be issued only after the Developer has constructed the access roads and utilities in accordance with the Plan, the Special Permit and the Order of Conditions and to the satisfaction of the Town Designee. Following the Completion of Construction of twenty seven (27) Units and the Senior Center in the South Phase, the Town shall execute a release, in recordable form, of the balance of the Option B Property,

applicable to the North Phase. Following termination of the Town's rights under this Agreement with respect to all Phases of the Project, the Town shall, at the request of Developer, execute an instrument in recordable form, acknowledging termination of all of its rights under Option B, and Option B shall be of no further force and effect between the parties.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Waiver. Except as otherwise expressly provided herein, failure on the part of either party of this Agreement to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is convenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent action by such party.

9.2. Invalidity of Particular Provisions. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9.3. Provisions Binding. This Agreement may be cancelled, modified or amended only by a written instrument executed by both parties hereto.

9.4. Governing Law. This Agreement and the performance hereof shall be governed exclusively by the laws of Massachusetts, as the same may from time to time exist.

9.5. Recording. The parties hereto agree that a fully executed original of this Agreement shall be recorded with the Registry of Deeds and the Registry District. The entire cost of recording this Agreement shall be borne by the Developer.

9.6. Notices. Except as otherwise expressly provided herein, whenever notices, demands, requests or other communications shall or may be given under this Agreement

either to the Town or to the Developer, the same shall be deemed adequately given if in writing and hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested: If intended for the Town, addressed to it at the mailing address set forth on the first page of this Agreement, with copies to the Town Counsel; and, if intended for Developer, addressed to the Developer at the mailing address set forth on the first page of this Agreement, with copies to Richard M. Cotter, Esquire, Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and Stanley L. Gordon, Esquire, D'Agostine, Levine & Gordon, P.C., 268 Main Street, Acton, Massachusetts 01720; or to such other address or addresses as may from time to time hereafter be designated by either party to the other by like notice; and such notices shall be effective upon receipt if hand delivered or upon deposit in the U.S. mail if subsequently received.

The Town and the Developer each agree to give prompt written notice to the other party of all material notices received by it from third parties relating to the Development Property.

9.7. Interpretation. As used herein, the singular shall include the plural and the plural shall include the singular as the context may require. The article and section headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement. References herein to successors and assigns of the Developer are not intended to constitute a consent to assignment or transfer by the Developer but refer only to those instances in which the Town shall have given consent thereto in accordance with the terms of this Agreement.

9.8. No Partnership. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any association between the Town and the Developer, or cause the Town to be responsible in any way for the debts or obligations of the Developer.

9.9. Secondary Mortgage Market. So long as no substantive changes are required, the Town agrees to modify the restrictions contained herein and to be contained in the various documents required hereunder if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require such modifications as a condition precedent to its approval or agreement to acquire mortgages on the Units given or to be given in connection with the sale of such Units to persons or entities not a party to this Agreement.

9.10. Certificates of Completion and Release of Conditions. If and when the Developer shall have performed and complied with some or all of the agreements and conditions set forth in this Agreement, the Town shall upon request of the Developer deliver to the Developer one or more certificates of completion and release of such conditions, in recordable form, signed by the Town Designee and stating that the Developer has performed and complied with some or all of the agreements and conditions set forth in this Agreement to the satisfaction of the Town. Such a certificate shall be conclusive evidence of the Developer's performance of such agreements and compliance with such conditions as are stated in such certificate and of the release of the Developer and the Development Property from such conditions by the Town, provided, however, that such certificates shall not discharge or release the Developer, its successors or assigns or the Development Property from the terms, conditions, covenants and restrictions contained in the Condominium's master deed the Order of Conditions and in the Special Permit, or from building, zoning and other applicable laws, ordinances or regulations.

9.11. Authority of Developer. The Developer and any officer or trustee of the Developer executing this Agreement and any other documents required in connection with this Agreement or any conveyance to be made hereunder hereby warrant that they have the requisite power and authority to enter into and carry out this Agreement and all other documents executed and delivered in connection herewith or therewith. The execution and delivery of this Agreement and all other documents executed and delivered in connection with this Agreement have been duly authorized in accordance with the Developer's Declaration of Trust (including any required action of all beneficiaries of the Trust) or by the Developer's board of directors, as applicable, to the extent required by law or the Developer's articles of organization, by-laws, or deed of trust, as applicable and no other action of the Developer is required for the execution, delivery and performance of this Agreement, and all other documents executed and delivered in connection herewith or therewith.

9.12. Town's Consent. Where the consent or approval of the Town, the Town Designee or the Conservation Administrator is required under the terms and conditions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

9.13. Delay Beyond Developer's Control. In the event that the Developer's performance pursuant to the terms and conditions of this Agreement is delayed due to Town action or inaction, other governmental regulation, unusual scarcity of or inability to obtain labor or materials, strikes, labor difficulties, casualty, market conditions or other causes

reasonably beyond the Developer's control, the dates for performance required hereunder shall be extended by a period equal to that of the aforesaid delay; in no event, however, shall the dates for performance required hereunder ever be extended by more than one year. The parties acknowledge, however, that the Town may extend any such date in its sole discretion, which discretion may be unreasonably exercised for any reason, by granting written permission to extend any such date.

9.14. No Assignment.

(a) Neither The Town nor the AHA shall assign or transfer its rights to purchase any of the five (5) Restricted Units granted hereunder, except that such right may be assigned or transferred to another municipal or quasi-municipal not-for-profit agency or organization.

(b) The Town has entered into this Agreement with the Developer in reliance upon the unique knowledge, experience and expertise of the Developer in the planning and implementation of construction of the Project. The Developer shall not assign, transfer or otherwise convey its rights and obligations hereunder, including any transfer, assignment or conveyance to a corporation or other entity owned or controlled by Roy C. Smith or the Developer, without the written permission of the Town. The Developer agrees that the Town shall not be required to accept performance under this Agreement from any Person other than the Developer except as provided herein, including, without limitation, any trustee of the Developer appointed under the Bankruptcy Code, 11 U.S.C. §101 et seq., and any assignee of any such trustee or of the Developer. Any assignee or transferee of the Developer's rights and obligations hereunder shall, without limitation, agree to be bound by the terms and conditions of this Agreement and shall provide the Town with evidence satisfactory to the Town sufficient to establish that such assignee or transferee has the financial capability and professional knowledge, experience and expertise to diligently and capably discharge its obligations under this Agreement. Any such assignee or transferee approved by the Town shall execute a document, in recordable form, evidencing the agreement of such assignee or transferee to assume and be bound by the terms and conditions of this Agreement, and such assignee or transferee shall promptly record, at its sole expense, such agreement with the Registry of Deeds and the Registry District.

9.15. Rule Against Perpetuities.

If the Rule Against Perpetuities or any rule of law with respect to restriction on the alienation of the Property shall limit the time within which any event or events

hereunder must occur, then such event or events, as the case may be, to which such rule applies shall not occur later than the expiration of 20 years after the death of Roy C. Smith, Nancy E. Tavernier, _____, _____, or any of their issue now living.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal this _____ day of _____, 1989.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

_____

_____

_____

_____

_____

High Street PCRC Trust

By_____
Roy C. Smith, as trustee

_____
Roy C. Smith, Individually

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named _____ and _____ acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen of the Town of Acton, before me

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, as trustee of High Street PCRC Trust, and acknowledged the foregoing instrument to be his free act and deed as trustee as aforesaid.

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, and acknowledged the foregoing instrument to be his free act and deed, as an individual, before me.

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named _____, the _____ of Roy C. Smith Associates, Inc., and acknowledged the foregoing to be his/her free act and deed and the free act and deed of said corporation, before me.

_____
Notary Public
My Commission Expires:

"A"

RECEIVED
JUN 9 1980
ACTON BOARD OF HEALTH

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee")

I/we, High Street PCRC (the "grantor")

of 292 Great Road, Acton, MA in consideration

of $ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #128 Audubon Lane, Phase II, Type A, 1090 sq. ft., 1 bedroom, 1 bath, 1 den,

living room/dining room combination, kitchen, one car garage (handicap)

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437.
18611 445 & Cert. of Title Book 1036, Pg.179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of $ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutally-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed with in the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of $ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Mark W. Meeker

For the Executive Office of Communities and Development:

_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 19

Elizabeth M. Gringeri
Notary Public
My commission expires: Dec. 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than on individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 128 Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A". RCS

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith

Roy C. Smith

Carol Wheeler

Jean C. Smith

Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gringer

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringer
Notary Public
My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 128 Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith

Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March ___, 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Gringer

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringer
Notary Public
My Commission Expires December 16, 1994

"A"

RECEIVED JUN 9 1989 ACTON BOARD OF HEALTH

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee")

I/we, High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA in consideration

of $ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #4 Brewster Lane, Phase I, Type A, 1090 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437.
18611 445 & Cert. of Title, Bk. 1036, Pg.179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of $ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutally-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed with in the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of $ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Marvin M. Mueller

For the Executive Office of Communities and Development:

_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

Elizabeth M. Gringeri
Notary Public
My commission expires: Dec. 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than on individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 4 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith

Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March ___, 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Gringer

Notary Public

My Commission expires: Dec. 16, 1994

Elizabeth M. Gringer
Notary Public
My Commission Expires December 16, 1994

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 4 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, RCS dated March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith

Roy C. Smith

Jean C. Smith

Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gringeri

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

"A"

RECEIVED
JUN 9 1989
ACTON BOARD OF HEALTH

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee")

I/we, High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA in consideration

of $ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #25 Brewster Lane, Phase I, Type B, 1140 sq. ft., 1 bedroom, 1 bath, 1 den,

living room/dining room combination, kitchen, one car garage (handicap unit)

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437
18611 445 & Cert. of Title Book 1036, Pg. 179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of $65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutally-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed with in the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of $ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor:

For the Grantee:

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Notary Public
My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than on individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 25 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith

Roy C. Smith

Jean C. Smith

Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gringeri

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 25 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March ___, 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Grinnell
Notary Public
My commission expires: Dec. 16, 1994

My Commission

"A"

RECEIVED
JUN 9 1989
ACTON BOARD OF HEALTH

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee")

I/we, High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA 01720 in consideration

of $ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #2 Brewster Lane, Phase I, Type B, 1140 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437.
18611 445 & Cert. of Title Book 1036,Pg.179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of $ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutally-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed with in the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of $ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Mark M. Mueller

For the Executive Office of Communities and Development:

_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringer
Notary Public
My commission expires: Dec. 16, 1994

Elizabeth M. Gringer
Notary Public
My Commission Expires December 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than on individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 2 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith

Roy C. Smith

Jean C. Smith

Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Grunger

Notary Public

My commission expires: DEC. 16, 1994

My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 2 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, (2C9) a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith

Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March ___, 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Gringeri

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

"A"

RECEIVED JUN 0

ACTON BOARD OF HEALTH

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee")

I/we, High Streeet PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA 01720 in consideration

of $5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #126 Audubon Lane, Phase II, Type B, 1140 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437 ~~& Cert. of Title #181329~~
Book 18611 Page 445 Book 1036, Page 179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of $65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutally-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed with in the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of $ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

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c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

For the Grantee:

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

Notary Public
My commission expires: Dec 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than on individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

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The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith

Roy C. Smith

Jean C. Smith

Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gingell

Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gingell
Notary Public
My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

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ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith

Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

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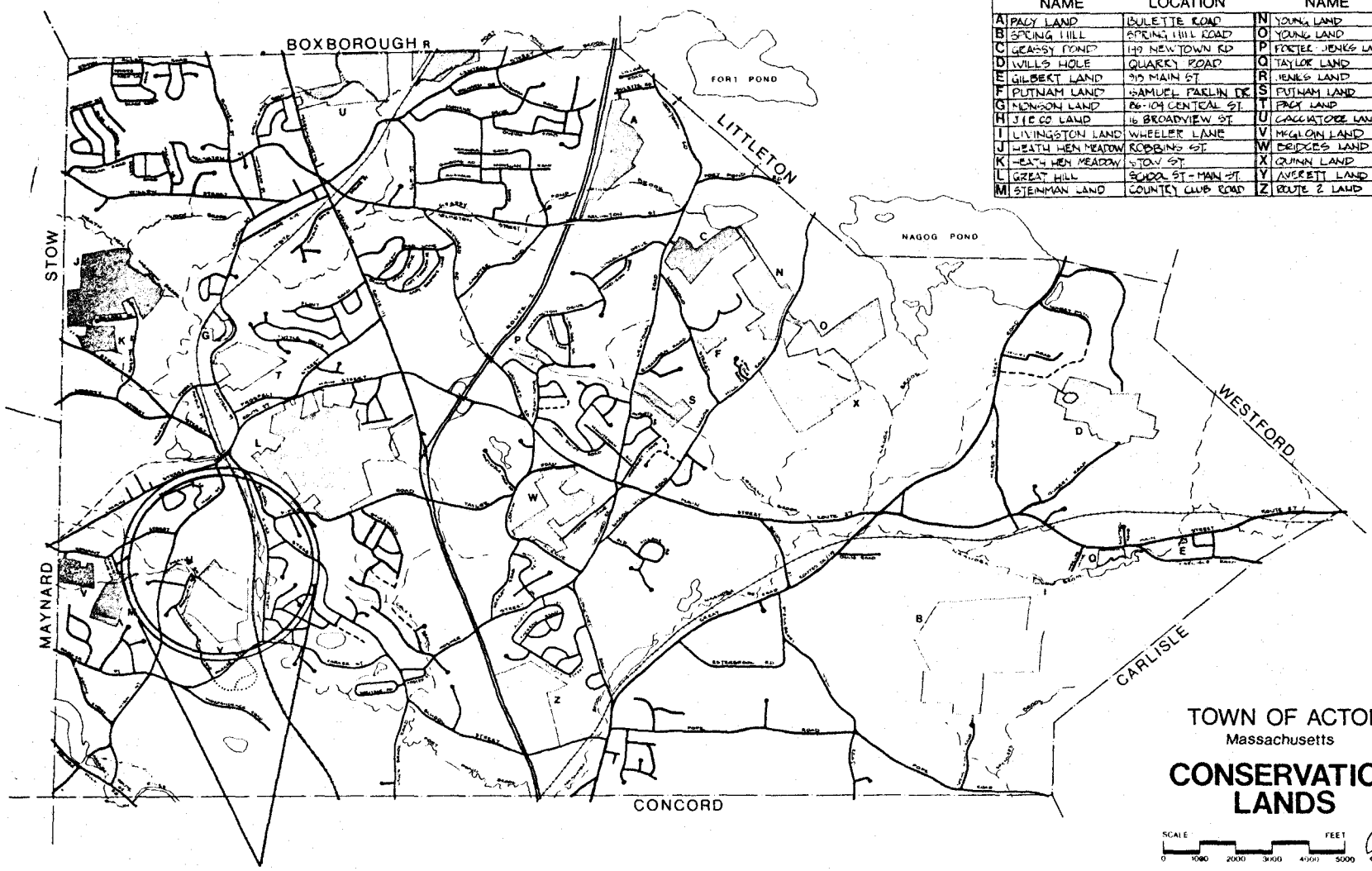
Elizabeth M. Gringeri

Notary Public

My commission expires: Dec 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994



PROPERTY LOCATIONS

	NAME	LOCATION		NAME	LOCATION
A	PACY LAND	BULETTE ROAD	N	YOUNG LAND	236-274 NAGOG HILL RD.
B	SPRING HILL	SPRING HILL ROAD	O	YOUNG LAND	257-265 NAGOG HILL RD
C	GEASSY POND	149 NEWTOWN RD	P	FOSTER JENKS LAND	MUSKET DRIVE
D	WILLS HOLE	QUARRY ROAD	Q	TAYLOR LAND	845-861 MAIN ST.
E	GILBERT LAND	913 MAIN ST.	R	JENKS LAND	392 CENTRAL ST.
F	PUTNAM LAND	SAMUEL PARLIN DR.	S	PUTNAM LAND	65-67 NEWTOWN RD.
G	MONSON LAND	86-104 CENTRAL ST.	T	PACY LAND	93 CENTRAL ST.
H	J I E CO LAND	16 BROADVIEW ST.	U	CACCIATORE LAND	670 MASS AVE.
I	LIVINGSTON LAND	WHEELER LANE	V	MCGLOIN LAND	66 CONANT ST.
J	HEATH HEN MEADOW	ROBBINS ST.	W	BRIDGES LAND	WOOD LN - TAYLOR RD.
K	HEATH HEN MEADOW	STOW ST.	X	QUINN LAND	NAGOG HILL RD
L	GREAT HILL	SCHOOL ST - MAIN ST.	Y	AVERETT LAND	PARKER ST.
M	STEINMAN LAND	COUNTRY CLUB ROAD	Z	ROUTE 2 LAND	WETHERBEE START 2

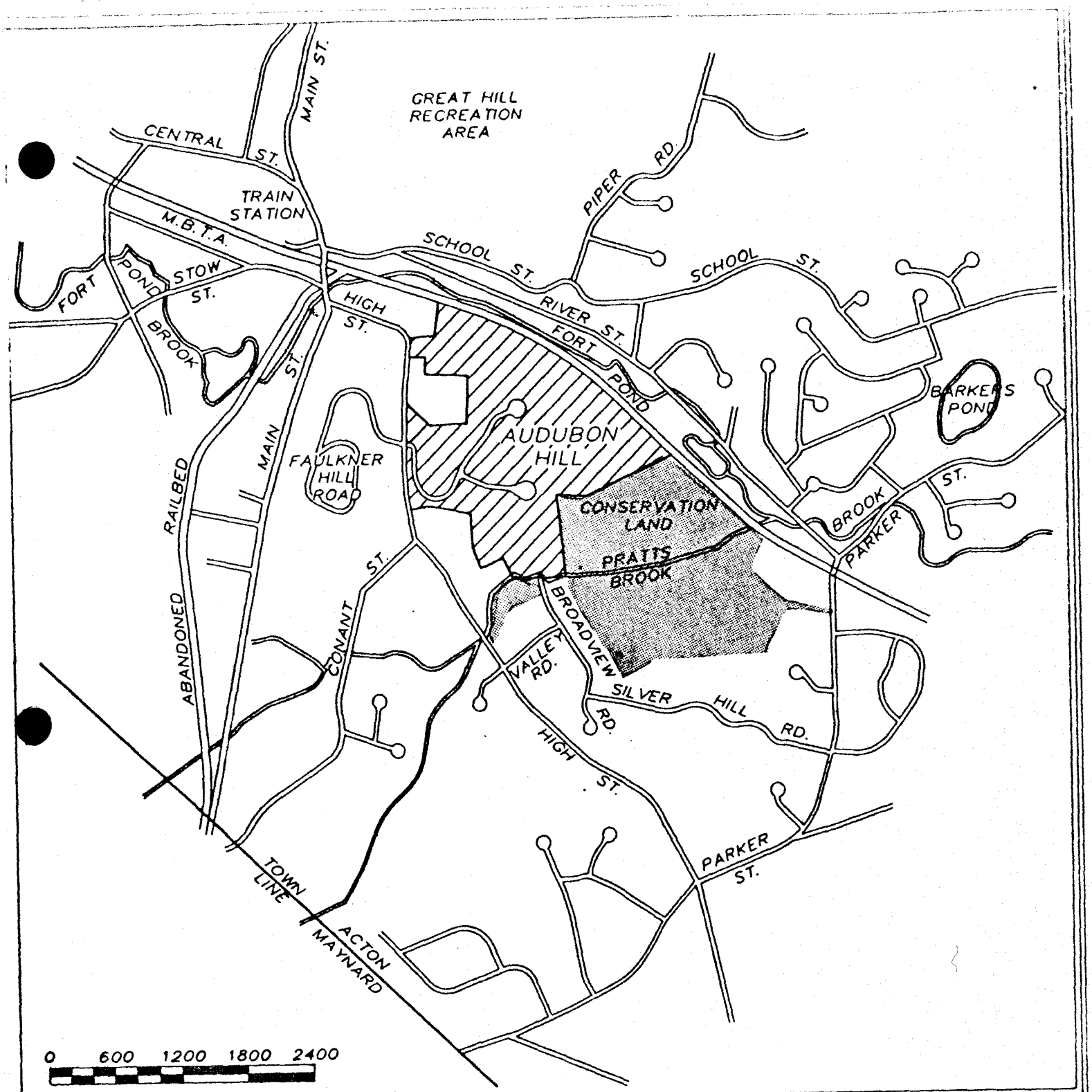
TOWN OF ACTON
Massachusetts

CONSERVATION LANDS

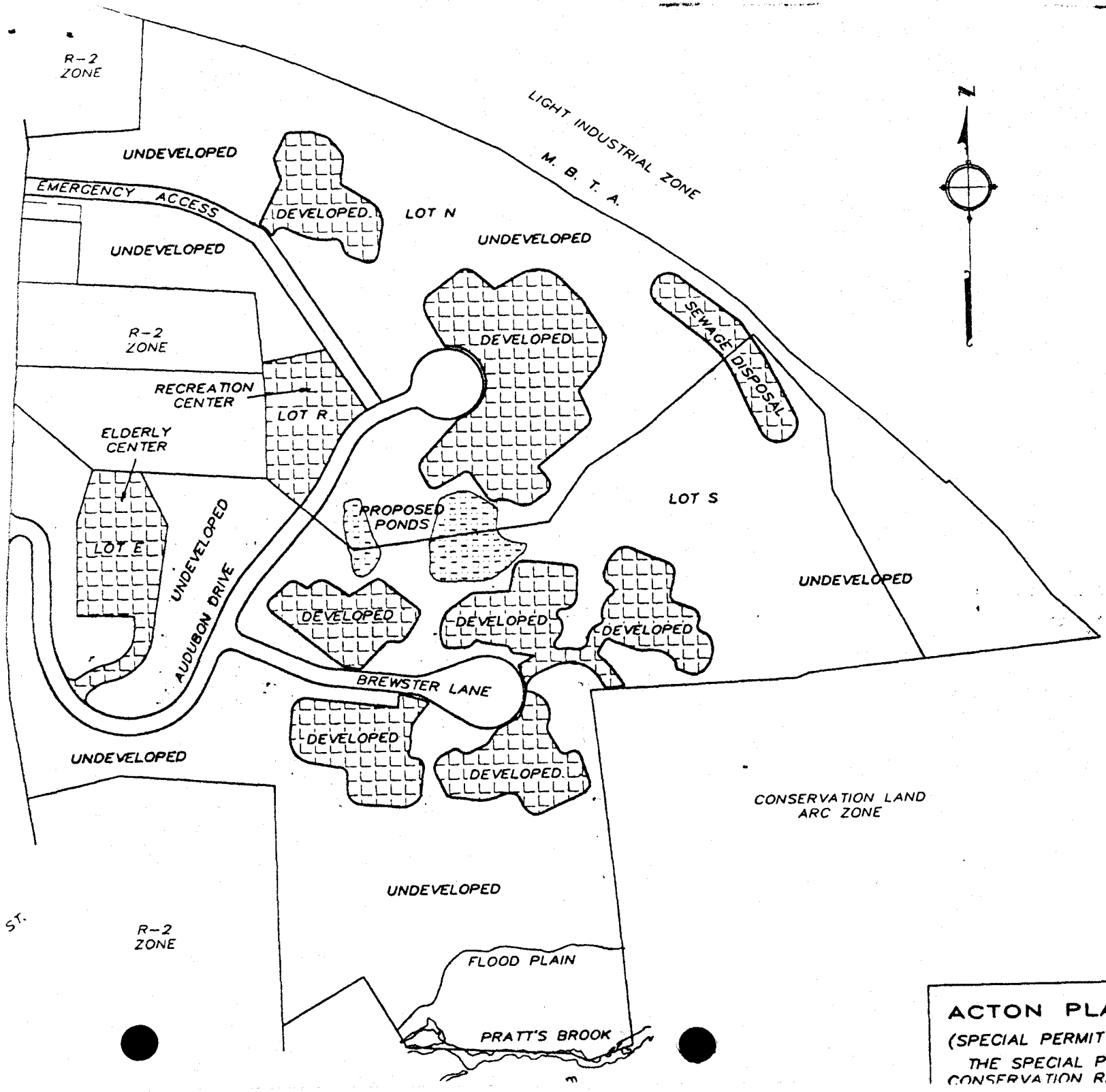
SCALE FEET
0 1000 2000 3000 4000 5000

AUDUBON HILL SITE

JUNE 1982



LOCUS MAP
1"=1200'



ACTON PLANNING BOARD
(SPECIAL PERMIT GRANTING AUTHORITY)
THE SPECIAL PERMIT FOR A PLANNED
CONSERVATION RESIDENTIAL COMMUNITY

MEMORANDUM

To: Don Johnson, Acton Town Manager, John Murray, Assistant Town Manager

From: David Y. Bannard

Re: Audubon Hill - Comprehensive Development Agreement - Timeline

Date: July 6, 1989

The Comprehensive Development Agreement (the "Agreement) between the Town of Acton and Roy C. Smith as trustee of the High Street PCRC Trust dated June 23, 1989 and the Escrow Agreement of even date relating to release of the Agreement contain reference to many dates by which events must occur. In addition, certain events trigger periods during which other actions must be taken. This memorandum sets forth a timeline of such events, divided according to events related to a date certain and those which are contingent on certain actions.

A. Events Related to a Specified Date:

Date	Event/Deadline
July 7, 1989 (7/14/89)*	Recordable Site Plan must have been submitted to Town Designee by Developer.
July 14, 1989 (7/21/89)*	Town Designee must have determined whether Site Plan is in accordance with Plan attached to Special Permit.
July 17, 1989 (7/24/89)*	Release Notices must be received by Escrow Agent. (If not received, Agreement will be destroyed.)

* Dates in parenthesis apply if deadlines extended, as requested by Roy Smith.

July 24, 1989	Developer must record Conservation Restriction (§2.2.(a)).
August 22, 1989	Developer shall have presented Town with survey showing Access Easement, Gravel Drives and Trails (§2.2.(e)).

Date	Event/Deadline
December 31, 1990	Conservation Improvements contemplated in §2.2 must be completed (§2.2(g)).
June 23, 1992	Project must be completed (unless dates extended pursuant to Agreement) (§2.1).
July 31, 1992 (or completion of construction, if earlier)	Certain condominium documents must be recorded by Developer (§3.1(b)).
October 9, 2027	Option A expires; Option B expires.
June 23, 2029	Restrictions limiting residency in Project to Senior Citizens; price restrictions; and restrictions on sale of restricted units expire (unless extended pursuant to condominium documents) (§§3.3(b); 3.4(b), (c)).

B. Subsequent Events and Related Time Periods Triggered By Certain Prior Events:

Event	Subsequent Event/Time Period
Execution and recording of Agreement	Town and Developer shall execute release of Prior Development Agreement, Prior Release Agreement, First Option Agreement, Subordinated Option Agreement (but not Option A or Option B) (§§1.2.(a); 4.1.(d)).
Conservation Restriction recorded and Security provided	Within 10 days, Town will execute release of Option A (§2.2.(h)).
Easement to Averritt Land recorded	Prior to commencement of construction of any Unit (§2.2.(b)).

Event	Subsequent Event/Time Period
First building permit issued	Town will release all of Option B except portion relating to North Phase (§8.5). Within 180 days, Senior Center must be completed (§5.5.). Developer will insure Project and provide Town with certificates of insurance (§7.1.).
Developer notifies Town of Completion of Conservation Improvements (§2.2).	If satisfactory, Town shall release Security related to such Improvements (§2.2.(i)). 90 days following notice by Town to Developer that Improvements are unsatisfactory, Town may draw on Security to complete Improvements (§2.2.(j)).
60 days prior to Completion of Construction of each AHA Unit	Developer notifies AHA and Town (§3.3(f)).
30 days following Construction of each AHA Unit	Convey Unit to AHA (unless earlier date agreed upon by parties) (§3.3.(f)).
Certificate of Occupancy issued for Unit	Unit may be conveyed (§3.3(g)).
	At least 20 days before sale of Restricted Unit is to be closed, Approval Documents must be delivered to Town Designee (§3.4.(f)).
	Within 10 days of receiving Approval Documents, Town Designee approves or disapproves sale of Restricted Unit (§3.4.(f)).
	Sale of Restricted Unit must close within 120 days of Town Designee's approval (§3.4(f)).
	If no Eligible Purchase located within 180 days of notification of Town Designee, Restricted Unit may be sold at market price (§3.4.(h)

Event	Subsequent Event/Time Period
Completion of Construction of Senior Center	Town and Developer execute 99 year lease of Senior Center to Town (with 99 year extension option) (§5.2). Town insures own interest in Senior Center, per lease.
Completion of Construction of Senior Center and 27 Units in South Phase	Building permits for North Phase may be issued (§3.2(b)). Certificates of Occupancy for further Units may be issued (§3.3(g)). Balance of Option B, applicable to North Phase, will be released by Town (§8.5).
Completion of Construction of Project	Town will execute release of Agreement, and confirm release of Option A and Option B (§§1.2.(b); 8.5).
Request for estoppel certificate	Delivered by Town Designee within 15 days. (§§6.2(b)(vi); 9.10).
Unauthorized lien placed on Development Property	Developer must discharge within 15 days of notice (§8.1.(c)).
Developer's Default	Developer must cure within 60 days or Town may exercise Options (§8.1). Construction Lender has further 30 days to cure, or begin curing, default (§6.2.(b)(iii)). Town has 180 day extension on exercise of Options if zoning relief required (§8.2).
Developer's Bankruptcy	Subsequent Developer of Project will execute new Agreement within 60 days of disaffirmance of Agreement in bankruptcy (§6.2(b)(v)).
Casualty to Project	Developer shall reconstruct with and to extent of available proceeds within 18 months (§7.3.)(d)).
Insurance on Project to expire	10 days prior, Town Designee may notify Developer of Town's intention to renew policy (§7.1.). 5 days prior, Town may procure insurance (§7.1).

Notes: (1) Pursuant to §9.13, the Developer may extend any deadline by up to one year for delays beyond its control. These deadlines may be further extended by the Town.

(2) Each party shall give the other prompt notice of any material notice it receives.

DRAFT

K

AUDUBON HILL CONDOMINIUMS
CONSERVATION RESTRICTION

Roy C. Smith, Trustee, High Street PCRC Trust, under Declaration of Trust, dated _____ ____, 198_, recorded in Middlesex South District Registry of Deeds, Book ____, Page ____, ("TRUST"), hereby grants to The Inhabitants of The Town of Acton, a municipal corporation, a Conservation Restriction in perpetuity on a parcel of land situated in Acton, Massachusetts.

The following conservation restrictions are intended to retain the aforesaid area predominantly in its natural, scenic and open condition in order to protect the natural and watershed resources of the town of Acton and to preserve the are for outdoor recreational and scenic enjoyment.

The terms of the conservation restriction are as follows: That neither TRUST nor its successors or assigns will perform the following acts nor permit others to perform them on any portion of the land described as "Conservation Open Space" as shown as

> *"The land on the easterly side of High Street, in Acton, Middlesex County, Massachusetts, being shown as Lots E, N, R and S on a plan entitled, "Open Space Plan of Audubon Hill, in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, Acton Survey & Engineering, Inc., 277 Central Street, Acton, Mass., being sheets 39 through 42 of 46 sheets, to be recorded herewith in the Middlesex South District Registry of Deeds, reference to which plan may be had for a more particular description of said Lots.*
>
> *"Lot E containing 72,414± square feet, 1.6624± acres; Lot N containing 1,235,084± square feet, 28.3536± acres; Lot R containing 56,066± square feet, 1.287± acres; and Lot S containing 1,739,835± square feet, 39.9411± acres, and being Lots E, N, R and S, as shown on said plan, however otherwise bounded, measured or described.*
>
> *"There is excluded from the foregoing description the following named areas: A) Audubon Drive, Brewster Lane, and access drives and B) "Exclusive Residential Use" areas: Phase N-1 and N-2 containing 177,795 square feet, Phase N-3 containing 72,802 square feet, Phase S-1, S-2, S-3 and S-4 containing 341,529 square feet, Phase S-5 containing 76,162 square feet, and being Phases N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5, however otherwise bounded, measured and described on the foregoing described plan.",*

hereby granting restrictions against all persons:

1. No building, sign, fence, utilities or other permanent structure will be constructed or permitted to remain on the area, without written approval from the Conservation Commission.

2. No soil, loam, peat, gravel, sand, rock or other mineral substance, refuse, trash, vehicles or vehicles parts, rubbish, debris, junk, waste or unsightly or offensive material will be placed, stored or dumped on the area.

3. No loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated or removed from said parcel in such a manner as to affect the surface of the area permanently.

4. No trees or other vegetation shall be cut or otherwise destroyed, except that the grantor reserves for itself, its successors and assigns, the right to conduct or permit the following activities on the area;

   a. The planting and cultivation of trees, shrubs, flowers and other vegetation.

   b. The cutting or pruning of trees, brush, grass or other vegetation to improve the scenic view and to implement disease prevention measures, including the cultivation and harvesting of forest products in accordance with recognized forestry conservation practices.

   c. The installation, use, maintenance, repair and replacement, of roads, paths and any underground utility lines and underground sewage disposal systems.

5. No poultry or livestock of any kind shall be raised or kept in said area.

6. This conservation restriction does not grant either the Town of Acton or the public any right to enter or use said parcel. However, there is granted to the Conservation Commission a permanent easement of access to enter said parcel for the purpose of inspecting the premises and enforcing the foregoing restrictions.

7. Nothing in the above shall prohibit or restrain reasonable recreational use of the premises by the owner(s) thereof. Examples of reasonable recreational use would be walking, hiking, bicycling, sailing, skating and related quiet sports. Motorized recreational vehicles are excluded in this area.

8. Nothing in this instrument shall be interpreted to prevent the Conservation Commission (upon the petition of the TRUST) from designating additional recreational areas upon which non-structural amenities such as jogging trails may be built for recreational use.

9. Nothing in this instrument shall be interpreted to prevent the TRUST from performing excavation and regrading activities reasonably necessary for the maintenance of existing trails, ponds, and drainage courses.

10. Notwithstanding the provisions of this Conservation Restriction, the Grantor, his successors or assigns may place a sign or signs, each of a size not to exceed three (3) feet by two (2) feet, on or about the granted premises for the purpose of indicating the ownership, and permitted or restricted use, of the premises. Such signs shall not be deemed in violation of this Conservation Restriction.

11. Notwithstanding the provisions of this Conservation Restriction, the Grantor shall not be prohibited from conducting such activities on the granted premises as are necessary or required in connection with the construction of the Residential Development under a Special Permit granted by the Town of Acton Planning Board under the PCRC By-Law, or any amendments to that By-Law, provided that such activities do not interfere with the permanent condition of the land for the purpose of this Conservation Restriction.

Signed and sealed this _____ day of _____, 1988.

HIGH STREET PCRC TRUST

By: _____
Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. _____, 1988

Then personally appeared the above named Roy C. Smith, Trustee aforesaid and acknowledged the foregoing instrument to be the free act and deed of DGR Investment Realty Limited Partnership, before me.

_____
Notary Public
Commission expires: _____

APPROVAL BY SELECTMEN

We, the undersigned Board of Selectmen of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

APPROVAL BY THE PLANNING BOARD

We, the undersigned Planning Board of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

APPROVAL BY THE CONSERVATION COMMISSION

We the undersigned Conservation Commission of the Town of Acton hereby certify that we approve the foregoing Conservation Restriction.

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

_____ Date _____

AUDUBON HILL SOUTH CONDOMINIUM
RESTRICTIVE AGREEMENT
DEED RIDER

Attached to and made a part of that certain deed from
Roy C. Smith, Trustee of High Street PCRC Trust ("Grantor")
of 292 Great Road, Acton, Massachusetts 01720

to

("Grantee")

dated , 1988, to be recorded herewith

conveying property located at Unit No. _____, Audubon Hill South Condominium, Acton, Massachusetts (hereinafter called the "Property")

WHEREAS, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, with the Middlesex South District Registry of Deeds (hereinafter called the "Grantor") is the Declarant of a Master Deed of The Audubon Hill South Condominium in Acton, Middlesex County, Massachusetts, by Master Deed dated _____, 1988, recorded in Book _____, Page _____, said Deeds as the same may be amended from time to time; and

WHEREAS, The Town of Acton, acting through its Planning Board, has granted to the Declarant a Planned Conservation Residential Community Special Permit, dated _____, 1988, recorded with said Deeds in Book _____, Page _____, (hereinafter called the "Special Permit"), which Special Permit contains certain restrictions and conditions; and

WHEREAS, the Declarant is conveying the Property to the Grantee at a consideration which is Fifty (50%) percent below the fair market value of the Property, in conformity with and subject to and with the benefit of the terms, conditions and restrictions of said Special Permit;

NOWTHEREFORE, as further consideration from the Grantee to the Grantor for the conveyance of the Property at the "Discount Price" in accordance with the Special Permit, the Grantee, its heirs, successors and assigns, hereby agrees that the Property shall be subject to the following restrictions which are hereby imposed for the benefit of and shall be enforceable by, the Grantor, so long as it owns a unit in the condominium, the Audubon Hill South Condominium Association, Inc., as successor to the Grantor after the Grantor conveys all of the property, or the Town of Acton, acting through the Town of Acton Housing Authority, or its successors, assigns, agents and designees (hereinafter called "Town of Acton").

1. Right of First Refusal:

When the Grantee or any successor in title to the Grantee shall desire to sell, dispose or otherwise convey the Property or any portion thereof, the Grantee shall notify the Town of Acton in writing of the Grantee's intention to so convey the Property ("Notice"). The Notice shall contain an appraisal of the Property acceptable to the Town of Acton prepared by a real estate appraiser acceptable to the Town of Acton and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts, and the Notice shall set forth the Maximum Resale Price of the Property which shall be defined as the greater of the original "Discount Price" at the time of the original purchase by the Grantee or fifty (50%) percent of the Property's Fair Market Value at he time of resale (hereinafter called the "Maximum Resale Price"). Within thirty (30) days of the Town of Acton's receipt of the Notice, the Town of Acton shall notify the Grantee in writing as to whether the Town of Acton shall exercise its right of first refusal to purchase the Property. The Town of Acton agrees to release its right of first refusal in the form of a certificate in recordable form stating that the Town of Acton releases and waives its right of first refusal hereunder. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by all parties as constituting conclusive evidence that this excess amount, if any, has been paid to the Town of Acton and that the Town of Acton has waived its right of first refusal to purchase the Property.

In the event the Town of Acton notifies the Grantee that the Town of Acton does not intent to exercise its right of first refusal or if the Town of Acton fails to notify the Grantee within said thirty (30) day period, the Grantee may convey the Property to an "Eligible Purchaser" as defined in Paragraph No. 2 herein. Provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the "Eligible Purchaser" which exceeds the Maximum Resale Price, if any, shall be immediately and directly paid to the Town of Acton. Upon receipt of the excess amount, if any, the Town of Acton shall issue to the third party a certificate in recordable form indicating the Town of Acton's receipt of the excess amount and stating that the Town of Acton releases and waives its right of first refusal hereunder. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by all parties as constituting conclusive evidence that this excess amount, if any, has been paid to the Town of Acton and that the Town of Acton has waived its right of first refusal to purchase the Property.

In the event the Town of Acton within said thirty (30) days period, notifies the Grantee of the Town of Acton's intention to exercise the Town of Acton's right of first refusal, the Town of Acton may, within sixty (60) days of the date of the Town of Acton's Notice to the Grantee, elect to purchase the Property itself subject to the restrictions herein contained and at the Maximum Resale Price.

If the Town of Acton elects to purchase the Property within said sixty (60) days period, but the Town of Acton elects not to purchase the Property, the Grantee may convey the Property to an eligible purchaser subject to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price, if any, shall be immediately and directly paid to the Town of Acton. upon receive of this excess amount, if any, the Secretary shall issue to the third party a certificate in recordable form indicating the Secretary's receipt of the excess amount and indicating that the Town of Acton has waived its right of first refusal to purchase the Property. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry District of the Land Court and such certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that the excess amount, if any, has been paid to the Town of Acton and that the right of first refusal to purchase the Property set forth herein are null and void.

Failure to record the certificate provided in this Paragraph 1 shall not affect the validity of such conveyance, but the restrictions, covenants and remedies herein contained shall not be released unless such certificate is recorded.

2. <u>Maximum Resale Price and Eligible Purchaser of Restricted Units</u>:

The resale of the Property in perpetuity from the date of recording of the Master Deed, shall be restricted to the resale for a purchase price no greater than the greater of the original "Discount Price" at the time of original purchase by the Grantee or fifty (50%) percent of the Property's fair market value at the time of sale (hereinafter called the "Maximum Resale Price").

When the Grantee or any successor in title to the Grantee shall desire to sell, dispose or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Town of Acton in writing of the Grantee's intention to so convey the Property (hereinafter called the "Notice").

The Notice shall contain an appraisal of the Property acceptable to the Town of Acton prepared by a real estate appraiser acceptable to the Town of Acton and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts, and the Notice shall set forth the Maximum Resale Price of the Property. The Notice shall further set forth the name of the purchaser (hereinafter called "eligible purchaser") and shall contain a letter from an institutional lender or other mortgage lender qualified to do business in the secondary mortgage market verifying that the eligible purchaser is unable to qualify pursuant to Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC) (or their successors) personal income qualifications for a mortgage loan in a principal sum greater than the Maximum Resale Price. Within thirty (30) days of the Town of Acton's receipt of the notice, the Town of Acton shall notify the Grantee in writing of its approval or disapproval of the Maximum Resale Price and the eligible purchaser.

In the event the Town of Acton approves the maximum resale price and eligible purchaser, the Town of Acton shall issue a recordable certificate granting its approval. This certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry of the Land Court and such certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that the Town of Acton has approved the sale of the Property in conformity with these restrictions and covenants.

3. Resale and Transfer Restrictions:

Except as otherwise stated herein, the Property or any interest therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the eligible purchaser in accordance with Paragraph 2 above) to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property determined as of a date not later than the date of transfer or conveyance of title to the Property:

(a) No conveyance, sale or transfer to an Eligible Purchaser (as approved in accordance with Paragraph 1 above) shall be valid and be deemed in accordance with the terms of this Rider unless a certificate is obtained and recorded, signed and acknowledged by the Town of Acton, or its agent or designee which refers to the Property, the Grantee thereof, the Eligible Purchaser thereof,

and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the Eligible Purchaser is in compliance with the restrictions contained in this Rider.

Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may relay upon a certificate of the type referred to in this Deed and Rider referring to the Property as conclusive evidence of the matters stated therein and may record such certificate in connection with conveyance of the Property, provided, in the case of a certificate under 2(a) above, the consideration recited in the deed or other instrument conveying the Property shall not be greater than the consideration stated in the certificate.

Within ten (10) days of the closing of the conveyance of the Property, the Grantee shall deliver to the Town of Acton a true and certified copy of the deed of the Property as recorded, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

The Grantor specifically reserves the right to record a Certificate of Approval regarding the approval of the Eligible Purchaser of the first sale of each Restricted Unit.

4. Rights of Mortgagees:

Notwithstanding anything herein to the contrary, if the holder (other than the Grantor or its designee) of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, the restrictions and covenants herein contained shall not apply to such holder upon such acquisition of the Property, any purchaser (other than the Grantor or its designee) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Grantor or its designee) of the Property from such holder. These restrictions shall, however, be in full force and effect at the time of resale of the foreclosed property by the purchaser at any foreclosure sale.

5. Covenants to Run with the Property:

The Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Grantor and the Town of Acton, its agents, successors, designees and assigns, the right to enforce the restrictions set forth in this Rider. The Grantee hereby grants to the Grantor and the Town of Acton the right to enter upon the premises for the purpose of enforcing the restrictions herein contained or of taking all actions with respect to the premises which the Grantor or Town of Acton may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions. The rights hereby granted to the Grantor or Town of Acton shall be in addition to and not in limitation of any other rights and remedies available to the Grantor or the Town of Acton for enforcement of the restrictions set forth in this Rider. It is intended and agreed that the agreements, covenants and restrictions set forth above shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Grantor and the Town of Acton, acting through its Housing Authority, their agents, successors, designees and assigns in perpetuity from the date of the recording of this Deed and Rider.

Without limitation on any other rights or remedies of the Grantor and the Town of Acton, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Rider in the absence of a certificate from the Grantor approving such sale, transfer or conveyance as provided herein or waiving the restrictions set forth herein, shall, to the maximum extent permitted by law, be voidable by the Grantor and the Town of Acton, their agents, successors, designees or assigns by suit in equity to enforce such restrictions.

6. Notice:

Any notices, demands or requests that may be given under this Rider shall be sufficiently served if given in writing and by hand delivered or posted in the United States mail by registered or certified mail, addressed to the Grantor and Grantee at the addresses written above, or if addressed to the Town of Acton, c/o Town of Acton Housing Authority, Acton, MA 01720, or such other addresses as may be specified by either party of such notice.

7. Further Assurances:

The Grantee agrees from time to time, as may be reasonably required by the Grantor or the Town of Acton, to furnish the Grantor or the Town of Acton a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other information pertaining to the Property or the Grantee's eligibility for and conformance with the these restrictions.

I/We, hereby acknowledge receipt of and agree to be bound by the within restrictions and agreements this _____ day of _____, 1988.

_____

_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Then personally appeared the above-named _____ and _____ and acknowledged the foregoing instrument to be _____ free act and deed, before me

_____
Notary Public
My Commission Expires:

k/audrestagreement(viii-xiv)

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

RECEIVED
JUL 13 1989

July 7, 1989

Mr. Don Johnson, Town Manager
Acton Town Hall
Acton, Massachusetts 01720

Re: Comprehensive Development Agreement Dated June 23, 1989

Dear Don:

Enclosed please find (i) a memorandum setting forth the deadlines and time periods contemplated by the referenced agreement, in chronological order, and (ii) a copy of the letter from Roy C. Smith which I received July 5, requesting a one week extension of the time period for delivery of the plans called for in the Escrow Agreement of June 23, 1989.

I understand that you have agreed to this one week extension and that you have authorized me to grant this extension on behalf of the Town. If my understanding is correct, please sign the attached Instruction to Escrow Agent and return it to me at your earliest convenience.

Very truly yours,

David Y. Bannard

DYB/kc
Enclosure

MEMORANDUM

To: Don Johnson, Acton Town Manager, John Murray, Assistant Town Manager

From: David Y. Bannard

Re: Audubon Hill - Comprehensive Development Agreement - Timeline

Date: July 6, 1989

The Comprehensive Development Agreement (the "Agreement) between the Town of Acton and Roy C. Smith as trustee of the High Street PCRC Trust dated June 23, 1989 and the Escrow Agreement of even date relating to release of the Agreement contain reference to many dates by which events must occur. In addition, certain events trigger periods during which other actions must be taken. This memorandum sets forth a timeline of such events, divided according to events related to a date certain and those which are contingent on certain actions.

A. Events Related to a Specified Date:

Date	Event/Deadline
July 7, 1989 (7/14/89)*	Recordable Site Plan must have been submitted to Town Designee by Developer.
July 14, 1989 (7/21/89)*	Town Designee must have determined whether Site Plan is in accordance with Plan attached to Special Permit.
July 17, 1989 (7/24/89)*	Release Notices must be received by Escrow Agent. (If not received, Agreement will be destroyed.)

* Dates in parenthesis apply if deadlines extended, as requested by Roy Smith.

July 24, 1989	Developer must record Conservation Restriction (§2.2.(a)).
August 22, 1989	Developer shall have presented Town with survey showing Access Easement, Gravel Drives and Trails (§2.2.(e)).

Date	Event/Deadline
December 31, 1990	Conservation Improvements contemplated in §2.2 must be completed (§2.2(g)).
June 23, 1992	Project must be completed (unless dates extended pursuant to Agreement) (§2.1).
July 31, 1992 (or completion of construction, if earlier)	Certain condominium documents must be recorded by Developer (§3.1(b)).
October 9, 2027	Option A expires; Option B expires.
June 23, 2029	Restrictions limiting residency in Project to Senior Citizens; price restrictions; and restrictions on sale of restricted units expire (unless extended pursuant to condominium documents) (§§3.3(b); 3.4(b), (c)).

B. Subsequent Events and Related Time Periods Triggered By Certain Prior Events:

Event	Subsequent Event/Time Period
Execution and recording of Agreement	Town and Developer shall execute release of Prior Development Agreement, Prior Release Agreement, First Option Agreement, Subordinated Option Agreement (but not Option A or Option B) (§§1.2.(a); 4.1.(d)).
Conservation Restriction recorded and Security provided	Within 10 days, Town will execute release of Option A (§2.2.(h)).
Easement to Averritt Land recorded	Prior to commencement of construction of any Unit (§2.2.(b)).

Event	Subsequent Event/Time Period
First building permit issued	Town will release all of Option B except portion relating to North Phase (§8.5). Within 180 days, Senior Center must be completed (§5.5.). Developer will insure Project and provide Town with certificates of insurance (§7.1.).
Developer notifies Town of Completion of Conservation Improvements (§2.2).	If satisfactory, Town shall release Security related to such Improvements (§2.2.(i)). 90 days following notice by Town to Developer that Improvements are unsatisfactory, Town may draw on Security to complete Improvements (§2.2.(j)).
60 days prior to Completion of Construction of each AHA Unit	Developer notifies AHA and Town (§3.3(f)).
30 days following Construction of each AHA Unit	Convey Unit to AHA (unless earlier date agreed upon by parties) (§3.3.(f)).
Certificate of Occupancy issued for Unit	Unit may be conveyed (§3.3(g)).
	At least 20 days before sale of Restricted Unit is to be closed, Approval Documents must be delivered to Town Designee (§3.4.(f)).
	Within 10 days of receiving Approval Documents, Town Designee approves or disapproves sale of Restricted Unit (§3.4.(f)).
	Sale of Restricted Unit must close within 120 days of Town Designee's approval (§3.4(f)).
	If no Eligible Purchase located within 180 days of notification of Town Designee, Restricted Unit may be sold at market price (§3.4.(h)

Event	Subsequent Event/Time Period
Completion of Construction of Senior Center	Town and Developer execute 99 year lease of Senior Center to Town (with 99 year extension option) (§5.2). Town insures own interest in Senior Center, per lease.
Completion of Construction of Senior Center and 27 Units in South Phase	Building permits for North Phase may be issued (§3.2(b)). Certificates of Occupancy for further Units may be issued (§3.3(g)). Balance of Option B, applicable to North Phase, will be released by Town (§8.5).
Completion of Construction of Project	Town will execute release of Agreement, and confirm release of Option A and Option B (§§1.2.(b); 8.5).
Request for estoppel certificate	Delivered by Town Designee within 15 days. (§§6.2(b)(vi); 9.10).
Unauthorized lien placed on Development Property	Developer must discharge within 15 days of notice (§8.1.(c)).
Developer's Default	Developer must cure within 60 days or Town may exercise Options (§8.1). Construction Lender has further 30 days to cure, or begin curing, default (§6.2.(b)(iii)). Town has 180 day extension on exercise of Options if zoning relief required (§8.2).
Developer's Bankruptcy	Subsequent Developer of Project will execute new Agreement within 60 days of disaffirmance of Agreement in bankruptcy (§6.2(b)(v)).
Casualty to Project	Developer shall reconstruct with and to extent of available proceeds within 18 months (§7.3.)(d)).
Insurance on Project to expire	10 days prior, Town Designee may notify Developer of Town's intention to renew policy (§7.1.). 5 days prior, Town may procure insurance (§7.1).

Notes: (1) Pursuant to §9.13, the Developer may extend any deadline by up to one year for delays beyond its control. These deadlines may be further extended by the Town.

(2) Each party shall give the other prompt notice of any material notice it receives.

RSM

R. SMITH MANAGEMENT CORP.

292 GREAT ROAD • ACTON, MASSACHUSETTS 01720 • TEL. (508) 263-3115

June 30, 1989

David Y. Bannard, Esquire
Palmer & Dodge
One Beacon Street
Boston, MA 02108

Re: High Street PCRC Trust

Dear Dave,

As you had discussed with Dick Cotter on June 28, 1989, I am requesting an extension on the date for delivering of plans as provided in Paragraph 3 of the Escrow Agreement by and between the Town of Acton and High Street PCRC Trust, dated June 23, 1989. After my discussion and Dick Cotter's discussion with Jack Dunphy of Acton Survey & Engineering, the time that it will take to down-size the High Street PCRC Trust plans from 1" = 60' to 1"=40' and the printing of the plans for recording will not permit the plans to be delivered by July 7, 1989 as the Escrow Agrement requires.

This letter is a request to extend the time for delivering the plans in Paragraph 3 of the Escrow Agreement from fourteen (14) days to twenty one (21) days so that the plans will now be delivered on or before July 14, 1989. The date of July 17, 1989 in Paragraph 4 of the Escrow Agreement would be changed to July 24, 1989.

If the Town is in agreement with this request, please have the duplicate copy of this letter signed by or on behalf of the Town. The signed duplicate letter should be returned to me as soon as possible.

Please call Dick Cotter (1-508-264-4770) if you have any questions or if there is any problem with my request.

Very truly yours,

Roy C. Smith

cc: Richard M. Cotter, Esq.
Stanley L. Gordon, Esq.
Acton Survey & Engineering, Inc.

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

July 7, 1989

Richard M. Cotter, Esquire
Wilson, Orcutt, Cotter & Greenberg, P.C.
201 Great Road
Acton, Massachusetts 01720

Re: Escrow Agreement Dated June 23, 1989 between Roy C. Smith as trustee of the High Street PCRC Trust and the Town of Acton

Dear Dick:

Don Johnson has authorized me to agree, on behalf of the Town of Acton, to Roy C. Smith's request to extend the times for performance stated in paragraphs 3 and 4 of the referenced agreement by seven days. If you agree with this extension, please have Roy Smith sign the enclosed Instruction to Escrow Agent and return it to me.

I am also enclosing a memorandum setting forth the deadlines and time periods set out in the Comprehensive Development Agreement between Roy C. Smith as trustee of the Trust and the Town dated June 23, 1989. Please review this document and contact me with any questions or comments you may have.

Very truly yours,

David Y. Bannard

David Y. Bannard

DYB/kc
Enclosure
cc: Mr. Don Johnson, Acton Town Manager
Mr. Roy C. Smith
Stanley Gordon, Esquire
(all with enclosure)

INSTRUCTION TO ESCROW AGENT

The parties to this document make reference to a certain Escrow Agreement dated June 23, 1989 (the "Escrow Agreement") between Roy C. Smith as trustee of the High Street PCRC Trust (the "Trust"), the Town of Acton (the "Town") and the lawfirm of Palmer & Dodge ("Escrow Agent").

Roy C. Smith, as trustee of the Trust and the Town hereby instruct and authorize the Escrow Agent to extend each of the time periods stated in paragraphs 3 and 4 of the Escrow Agreement by seven (7) days.

High Street PCRC Trust

Date: _____

By: _____
Roy C. Smith, as trustee

TOWN OF ACTON, MASSACHUSETTS

Date: 7/13/89

By: Don P. Johnson
Don Johnson, Town Manager

ORIG. SIGNED & RETURNED TO TOWN COUNSEL 7/13/89.

AUDUBON HILL NORTH CONDOMINIUM

MASTER DEED

PHASE I

This Master Deed of the Audubon Hill North Condominium made this day of , 1989.

WITNESSETH that I, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, Middlesex South District Registry of Deeds, of Acton, Middlesex County, Massachusetts, (hereinafter referred to as the "Declarant"), being the owner of certain premises in Acton, Middlesex County, Massachusetts, hereinafter described on Schedule A, by duly executing and recording this Master Deed, does hereby submit said premises to the provisions of Chapter 183A of the General Laws of Massachusetts and by this Master Deed does create a Condominium, to be governed by and subject to the provisions of said Chapter 183A (including any amendments thereto hereafter enacted) and to that end, said Declarant does hereby declare and provide as follows:

1. NAME OF CONDOMINIUM AND DESCRIPTION OF PREMISES

The name of the Condominium shall be the Audubon Hill North Condominium. The premises which constitute the condominium comprise the land (the "Land") situated at High Street, Acton, Middlesex

(res phased 06/22/89)

County, Massachusetts together with the improvements and building now existing and to be hereinafter constructed thereon (collectively, the "Condominium"), as shown on a plan entitled, "Audubon Hill North Condominium" dated _____, 1988, to be recorded herewith, said plan being the Condominium Plans hereinafter referred to, all which are recorded herewith, said premises being bounded and described as set forth on the attached Schedule A. Said Audubon Hill North Condominium Phase I consists of six (6) units and is the first phase of a three (3) phase condominium. Said Declarant reserves the right, but not the obligation, to create additional phases, including any part thereof as shown on the plans hereinbefore mentioned. When and if all Phases are completed, the Condominium will contain thirty (30) units. Said Phase I consists of two (2) buildings each containing three (3) units and has access through a private road named Audubon Drive to High Street, Acton, Massachusetts, all as shown on the Condominium Plans which shows the layout, location, unit numbers and dimensions of the units as built. Said premises are submitted to the provisions of Chapter 183A and are subject to the right and easement hereby reserved by the Declarant to construct the buildings, parking areas and roadways designated as Phases II and III, as shown on the Condominium Plans hereinabove referred to. The Declarant also reserves the right to have as an appurtenance to the construction of Phases II and III an easement to pass and repass over the said land, including the right to store equipment and supplies,

so far as the same are necessary and convenient for the construction of the said Phases II and III. The Declarant, its successors and assigns, shall have such right and easement to use driveways and walkways affording access to the said premises including the right and easement to construct additional driveways and walkways to serve the said buildings in Phases II and III provided that such easement for access and construction shall not interfere with the access of the owners of the units in Phase I to their units.

The Declarant further reserves the right in the construction and creation of subsequent phases (including the right to create sub phases within one or more phases), to change the order of such phases provided that in all instances the percentage of interest attributable to each such unit then existing shall be determined in a manner in conformity with the provisions of Chapter 183A, as amended.

The Declarant reserves the right to grant easements over, under, through and across the common areas of the Condominium Land and Building for the purpose of installing cable television lines serving the Units in the Condominium and such other equipment as may be necessary for the installation and operation of the same.

2. DEFINITIONS

All terms and expressions herein used which are defined in Chapter 183A of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context otherwise requires.

3. LEGAL ORGANIZATION

The Audubon Hill North Condominium Rules and Regulations shall refer to those Rules and Regulations as shall be adopted by the board of governors of the Association from time to time.

The Audubon Hill North Condominium Association, Inc. hereinafter referred to as the "Association", shall be the organization of Unit Owners organized pursuant to Chapter 180 of the General Laws of Massachusetts, which corporation will manage and regulate the aforesaid Condominium, pursuant to the By-Laws of the Association, this instrument, and Chapter 183A of the General Laws of Massachusetts.

Membership in the Association is appurtenant to Unit Ownership in the aforesaid Condominium and shall not be severable in any manner therefrom and this provision may not be amended by the Declarant, its successors or assigns.

The Board of Governors of the Association shall consist of at least three and not more than five persons. Initially, there shall be three governors appointed by the Declarant (including successors in the event of vacancy) who shall serve until the second annual meeting of the Unit Owners. Thereafter, the governors shall be elected by and from the members of the Association.

Officers of the Association shall consist of a President, a Treasurer and a Clerk. The initial officers shall be appointed by the Declarant. Subsequent officers shall be elected by the Board of

Governors to serve as such officers and Unit Owners. In the event of a Corporate Unit Owner, the officer may be a director or officer thereof. In the event of a Trust Unit Owner, the officer may be a Trustee or beneficiary thereof.

The By-Laws of the Association shall refer to those By-Laws of the Association which have been duly adopted in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts by the Board of Governors and are incorporated herein by reference and such amendments thereto as may from time to time be enacted.

4. DESCRIPTION OF BUILDING

Phase I of the Condominium consists of two (2) buildings each containing three (3) units, for a total of six (6) units), and having access through a walkway, driveway and Audubon Drive to High Street, all as shown on the Condominium plans above described and having such characteristics as are set forth in Schedule B and shown on the aforesaid Condominium Plans. The building has a masonry foundation, wood frame, wood siding with asphalt shingle roof.

5. DESIGNATION OF UNITS

Unit Designation, Number of Rooms, Approximate Area, Location and other descriptive information are as shown on the attached Schedule B, in the Condominium plans, all of which are incorporated herein and made a part hereof.

6. INTEREST OF UNIT OWNER

The Owners of each Unit shall be entitled to an undivided

interest in the common areas and facilities of the Condominium in the percentages set forth in the attached Schedule C, which percentages also reflect anticipated future development of a given order and mix of Units. The Declarant reserves the right to change such order and mix, and the corresponding percentage interest appertaining to the Units, including Units existing before as well as after such change, provided that such percentage interests as modified are in compliance with Chapter 183A, as amended.

101 - 128
130 + 137

7. BOUNDARIES OF UNITS

The boundaries of the Units are as follows:

a. Floor: The upper surface of the concrete basement floor or concrete first floor for units without basements;

b. Ceiling: The plane of the lower surface of attic roof rafters.

c. Interior Building Walls Between the Units:
The plane of the interior surface of the wall studs facing each Unit.

d. Exterior Building Walls, Doors and Windows:
The planes of the interior surface of the wall studs or in case of a concrete wall, the interior surface of said concrete wall; as to doors, the exterior surface thereof; as to windows, the exterior surface of the glass and window frames.

8. MODIFICATION OF UNITS

The owner of any Unit may not, at any time, make any changes or modifications of the exterior of said Unit or any interior changes which affect, or in any way modify, the structural or supportive characteristics or integrity of the building or its services; however, such Owner may modify the interior construction of such Unit in any manner not inconsistent herewith, and further may at any time and from time to time, change the use and designation of any room or space within such Unit, subject always to provisions of this Master Deed and the provisions of the By-Laws of the Association, including the Rules and Regulations promulgated thereunder. Any and all work with respect to the foregoing shall be done in a good and workmanlike manner pursuant to a building permit duly issued by the local building permit authority, if required, and pursuant to the plans and specifications which have been submitted to and approved by the Board of Governors of the Association. Such approval shall not be unreasonably withheld or delayed.

9.1 RESTRICTIONS ON THE USE OF ALL UNITS

See Below for pg 7

(a) Each Unit is hereby restricted to residential use and occupancy by senior citizens or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any natural person of age 55 or older.

(b) Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen,

so long as the senior citizen ~~occupies~~ reside in the Unit owned by his or her son or daughter.

(c) Each Residential Unit shall be occupied by no more than two persons as a single-family residence, who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Board of Governor's, a member of the Unit owner's Immediate Family (other than spouse) may reside in such unit upon a showing of good cause.

(d) Overnight guests who are not senior citizens shall be allowed for reasonable visitation periods not to exceed one (1) week in duration, but children or grandchildren may visit for a period not to exceed one (1) month per year, with out the written permission of the Board of Governors.

(e) Any lease or rental agreement for any Unit shall be to a senior citizen, or to a senior citizen and his or her spouse, in writing and specifically subject to the Master Deed, the By-Laws of the Association and the Rules and Regulations of the Condominium, including the restrictions with respect to occupancy, and shall have a minimum initial term of six (6) months. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Master Deed. The

aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the net expense to the owner of such Unit associated with owning such Unit, which net expense shall be defined as the sum of owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return of ten percent (10%) annual interest on the owner's downpayment; and any utility fees incurred by the owner in connection with the Unit.

Upon the rental of any Restricted Unit, the owner of said Unit shall provide the Board of Governors with documentation sufficient to substantiate the preceding requirements. The provisions of this last Paragraph shall not apply to non-restricted units. A copy of all leases or rental agreements, together with proof of age of all occupants, as executed (with the dollar amount of rent deleted at the unit owners option) shall promptly be furnished to the Board of Governors who shall keep and maintain the same as part of its records. The Board of Governors shall also be furnished at the same time with written acknowledgment of the lessee that the lessee has received copies of and will comply with the provisions of such Master Deed, By-Laws and Rules and Regulations. Notwithstanding the foregoing, the said Declarant, its successors, assigns or affiliated entities shall have the further right to let or lease (or not including purchase) to a senior citizen as defined in Section ~~8~~ 9.1(a) herein, any Units (Restricted or Non-Restricted) which have not been sold by it, including any such

Unit later acquired or later leased by it upon such terms and for such periods, but not less than thirty (30) days, as it, in it sole discretion, shall determine.

(f) The occupants of each unit shall be entitled to keep one (1) pet, either a cat or a dog per unit and the keeping of any such pet shall be subject to the Rules and Regulations adopted by the Board of Governors and in the event that any such pet, in the sole discretion of the Board of Governors, causes or creates a nuisance, said pet shall be permanently removed from the property upon three (3) days' notice.

The use of Units by all persons authorized to use same shall be at all times subject to the provisions contained in this instrument, the By-Laws of the Association and such Rules and Regulations as may be prescribed and established to govern such use or which may hereafter be prescribed and established by the Board of Governors of the Association. Any Unit Owner found by the Massachusetts Superior Court to be in violation of the provisions of this Master Deed, By-Laws and Rules and Regulations of the Association shall be liable for the reasonable counsel fees incurred by the association in enforcing same.

The Association also reserve the right and easement to enter onto the premises, from time to time, at reasonable hours, for the purpose of reconstructing and repairing adjoining Units, common areas

and facilities and to perform any obligations of the Association required or permitted to be performed under this Master Deed and/or the By-Laws of the Association.

Every Unit Deed conveying an interest in a Unit shall contain a Statement that such Unit is subject to the foregoing restrictions on the use of the units and the foregoing restrictions on use shall be attached to and made a part of each Unit Deed and shall be enforceable for a period of forty (4o) years from the recording of this Master Deed.

9.2 RESTRICTIONS ON THE FIRST SALE OF THE RESTRICTED UNITS

(a) Unit Nos. 102, 106, 110, 113, 117, 121, 122, 126, and 128 shall be known as the "Restricted Units". These restrictions shall not apply to all other units in the Condominium, which Units shall be known as the "Non-Restricted Units".

(b) The first sale of Unit Nos. 102, 106, 110, 113, 117, 121 and 122, Audubon Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a maximum gross sales price not to exceed seventy-five (75%) percent of the Fair Market Value of the price of the Non-Restricted Units (the "Discounted Price") (for example, if the price of the Non-Restricted Unit is Two Hundred Twenty Thousand ($220,000.00) Dollars, the maximum gross sales price of a Restricted Unit would be One Hundred and Sixty-Five Thousand ($165,000.00) Dollars); and the first sale of Unit Nos. 126 and 128, Audubon Lane, (hereinafter called "Restricted Units") by the

Declarant shall be restricted to a gross sales price of Sixty-Five Thousand and 00/100 ($65,000.00) Dollars and have been presold to the Acton Housing Authority. The first sale of the Restricted Units, except for the sale of Unit Nos. 126 and 128 which have been pre-sold to the Acton Housing Authority shall be to an Eligible Purchaser. An Eligible Purchaser shall be defined as a person or persons who is able to qualify pursuant to the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC), or their successors, income qualifications for a mortgage loan in a principal sum no greater than the gross sales price as previously set forth herein. A deed of the first sale of any of the aforesaid "restricted units", executed by the Declarant, shall conclusively be relied upon by third parties that the grantee named in said deed is an eligible purchaser, as defined in section 9.2 herein and that the conveyance of the Unit by the Declarant to the Grantee complies in all respect tot he restrictions as set forth herein. The Declarant further reserves the right to amend this restriction by substituting a different unit for any of the above-described "restricted units", so long as the total number of units so restricted herein is not reduced in number.

9.3 RESTRICTIONS ON THE RESALE OF THE RESTRICTED UNITS

(a) The Maximum Resale Price of the Restricted Units is the price, as of a given date, equal to seventy five (75%) percent of the Appraisal Value of such Unit (For example, if at the time of the

resale of a Restricted Unit, the Appraised Value of the Unit is Three Hundred Thousand ($300,000.00) Dollars; the maximum resale price of the unit is Two Hundred and Twenty Five Thousand ($225,000.00) Dollars.) Appraised Value as set forth herein, as to a Restricted Unit, the fair market value of the Restricted Unit as determined by real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price established by the Developer. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

(b) Price. For a period of forty (40) years from the date of this Master Deed no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit of and in

connection with the transfer of such Restricted Unit, is equal to or less than Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such unit. In the event that the price restrictions contained herein not be extended as provided herein or be withdrawn prior to the expiration of such forty (40) years period, the sum equal to the difference of the amount received by the Seller of the Unit and the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for Senior Citizens activities.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Town Designee. Means any person or entity designated by the Town in accordance with this Master Deed to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or

designee of the Developer or his or hers sucessors and assigns. The Town hereby designates as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals and certifications and tot take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

(e) Affidavit of Compliance with Restrictions. After the initial sale of the Restricted Units by the Developer and prior to the resale of any Restricted Units by the subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of the Unit, identifying the Unit in question, the then-current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certification thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer

of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(f) Certificate from Town. At least twenty (20 days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at its mailing address set forth on the first page of this Deed or such other address for the Town as shall of record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or resale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall

prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(i) a Certificate in recordable form signed and acknoeldged by the Town Designee referring to the Unit in ~~question,~~ the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

(a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Deed; or

(b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income + assets of the Prospective Purchaser, and the sale or resale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in (i) above referring to such Unit and such

Certificate so executed by the Town designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 9.2 (i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Units pursuant to such Approval Documents and certificate does not occur within on hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) day of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded,

together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Lack of Eligible Purchaser

(i) If the owner of a Restricted Unit places a Restricted Unit for resale on the open market, with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original listing agreement, the owner is unable to secure an eligible purchaser to purchase the Restricted Unit for the maximum resale price, then and only in such instance may the Restricted unit be sold without compliance with the foregoing resale restrictions which restrictions shall then be forever released as to the particular restricted unit.

(ii) In the event a Restricted Unit is sold as described in Paragraph 9.3 (G)(i), the sum equal to the difference of the amount received by the Seller of the Unit and the Unit's maximum Resale price shall be paid to the Acton ~~Housing Authority~~ Town to be utilized for the benefit of other Senior Citizens.

(iii) Prior to the sale of any restricted Unit pursuant to Paragraph 9.3(g), the Seller shall deliver to the Town Designee, an affidavit executed under oath and acknowledged by both the Seller and the prospective purchaser of the unit in question. The then current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the prospective purchaser household and stating and affirming:

(a) That the Unit was listed for sale with a real estate brokerage company, the name and address of the real estate company, and the specific time periods of the listing, including reference to the multiple listing service wherein the Unit was so listed for sale.

(b) The agreed purchaser price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or

paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(c) A certificate from the Town similar in form and content to the Certificate described in Section 9.3(f) herein shall be required, except that such Certificate shall also state:

(i) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the restrictions contained in this deed.

(ii) That the Town designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(iii) That the Town acknowledges receipt of funds required to be paid pursuant to section 9.3(G)(2) herein and that the unit in question is no longer a "Restricted Unit and is released as a Restricted Unit and from these restrictions in perpetuity.

(h) <u>Rights of Mortgages</u>. Notwithstanding anything herein to the contrary, if the Holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure, the restrictions and covenants herein contained shall not apply to such

holder upon such acquisition of the Property or to any purchaser (other than the Mortgagor) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Mortgagor) of the Property from such holder.

(i) 5 Extension of Restrictions. The period of enforceability of the Restrictions as set forth in Sections 9.1, 9.2 and 9.3 herein may be extended if a Notice is executed by a Unit Owner, Unit Mortgagee, Condominium Association, Town of Acton or Acton Housing Authority and said Notice is recorded with the Middlesex South District Registry of Deeds.

(j) Covenants to Run with the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

10. UNIT APPURTENANCES

Appurtenant to each Unit is the following:

a. Membership in the Association which shall be in the same percentage as an individual Unit Owner common interest. Such membership is not assignable or severable from the ownership of such Unit.

b. The exclusive easement to use the decks or porches adjacent to each Unit, if any there be, as shown on the said condominium plans recorded with the Master Deed which is incorporated herein by reference.

c. The exclusive easement to use the garage and one parking space, each bearing the respective unit number, as shown on the said condominium plans recorded with the Master Deed, which are incorporated hereby by reference.

All of the Units shall have appurtenant thereto, in common with each other, the right and easement to use the common areas, including the exclusive easement, if any, as may be granted in the Master Deed and as shown on said Condominium plans, subject to and in accordance with the restrictions, limitations, provisions and conditions as hereinbefore and hereinafter set forth in this Master Deed and the provisions of the By-Laws of the Association and the Rules and Regulations promulgated under the By-Laws.

11. COMMON AREAS AND FACILITIES

The common areas and facilities of the aforesaid Condominium comprise and consist of (a) the land described in the attached Schedule A as may from time to time be amended, together with the benefit of and subject to the rights and easements referred to in this Master Deed and on the Audubon Hill North Condominium plans annexed hereto; The said Common Areas are further subject to the right and easement of the Declarant to construct, mortgage and lease the structures constituting Phases II through III, and thereafter to submit the same as phases by Amendment to the Master Deed, as provided herein, provided, however, that until amendments are recorded by the Declarant, the structures will remain the property of the Declarant and shall not constitute part of the Condominium; (b) the foundations, structural columns, girders, beams, supports, exterior walls, interior floor joists and ceiling joists, including all studding and the common walls between the said Units of the building and between Units and the common areas; (c) roof of buildings, all sewer, water and electric lines, flue lines, conduits, ducts, pipes, plumbing, wiring, flues and other facilities for the furnishing of utility services which are contained in portions of the building contributing to the service and/or support of the Unit, other Units or common areas and facilities, but not including the lighting, heating, plumbing and other fixtures and kitchen and bathroom cabinets located solely within said Unit service the same

exclusively; (d) all such facilities contained within any Unit which serves part of the Condominium other than the Unit within which such facilities are contained; (e) the yards, lawns, gardens, driveways, walkways, and the improvements thereon and thereof, including walls, railings, steps, lighting fixtures and plants; (f) in the master television antenna systems and other facilities thereof, if any there be; (g) the parking lot and driveway subject to the exclusive easement of the unit owners;and (h) all other elements and features of the Condominium however designated or described excepting only the Units themselves as herein defined and described.

Notwithstanding anything to the contrary herein contained ,the said common areas and facilities are subject to such exclusive rights, easements and limitations on use contained in other portions of this Master Deed or as may hereafter be established pursuant to the provisions of this Master Deed.

12. EASEMENTS AND ENCROACHMENTS: UNITS AND COMMON AREAS

If any Unit, now or hereafter, encroaches upon any other Unit or upon a portion of the common areas and facilities, or if any portion of the common areas or facilities, now or hereafter, encroaches upon any Unit as a result of the construction, reconstruction, repairing, shifting, settling or movement of any portion of the improvements, a valid easement of the encroachment and for the maintenance for the same, shall exist so long as the building stands.

13. COMMON ELEMENTS: DETERMINATION OF PERCENTAGE

The determination of the percentage of interest of the respective Units in the common areas and facilities has been made upon the basis of the approximate relative fair market value of each Unit to the aggregate fair market value of all the Units in the Condominium, in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts. Any such amendments in subsequent phases to the Units then existing in the condominium as hereinbefore and hereinafter provided shall also be made on the foregoing basis.

14. AMENDMENT OF MASTER DEED

While the Declarant owns at least fifty (50%) percent of the percentage interest of the Units in the Condominium, this Master Deed may be amended by a majority vote of Unit Owners which shall constitute written consent of the Unit Owners and, by the written consent of the majority of the holders of the first mortgages on mortgaged Units, provided that any such amendment shall not substantially reduce the enjoyment or substantially increase the burdens of any Unit Owner.

Thereafter, this Master Deed may be amended subject to the restrictions of Chapter 183A of the General Laws of Massachusetts and, except as provided otherwise in this instrument or the By-Laws of the Association, by a vote of sixty-even (67%) percent in interest of the Unit Owners and written consent of at least fifty-one (51%) percent of the holders of the first mortgages on mortgaged Units.

Notwithstanding the foregoing, no such amendment shall restrict or interfere with the right of the Declarant to sell, mortgage or otherwise dispose of any Condominium Unit owned by it.

Any amendment involving a change in percentage interest shall, subject to the provisions of Section 16 below, require the assent of all unit owners whose percentage interest is affected by such change. No amendment shall be effective until recorded with the said Registry of Deeds.

Notwithstanding any of the provisions herein or of Chapter 183A, the Declarant, its successors and assigns, reserves the right to construct on the premises such additional Units (or any lesser part thereof) as described in Paragraph 1 and Paragraph 11, and after such construction is substantially completed to amend this Master Deed creating Phases II and III (including any sub phases), as hereinbefore described, and each Unit Owner, his successors, assigns and mortgagees shall, by the acceptance and recording of his Unit Deed under this Master Deed and Amendments thereto, irrevocably appoints the Declarant, its successors, assigns and mortgagees as his attorney to execute, acknowledge and deliver any and all instruments necessary to accomplish the provisions of this Master Deed. The right to amend this Master Deed to add such additional phase or phases shall expire seven (7) years from the date of recording this Master Deed. All future improvements with respect to the phases to be added shall be consistent with the initial improvements in terms of quality of construction.

15. TERMINATION

The Unit Owners may remove the property from the provisions of Chapter 183A of the General Laws of Massachusetts and this Master Deed by the procedure set forth in the appropriate section of said Chapter 183A, as may be amended from time to time.

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, each Unit Owner having an undivided interest therein in the same percentage of undivided interest as previously owned by him in the common areas and facilities.

The removal provided for in this paragraph and in the By-Law of the Association shall not bar the subsequent re-submission of the premises to the provisions of Chapter 183A of the General Laws of Massachusetts.

16. MORTGAGEE STATUS

Notwithstanding anything in this Master Deed or the Condominium Association or its By-Laws to the contrary, the following provisions shall apply for the protection of the holders, insurers or guarantors of the first mortgages (hereinafter "First Mortgagees") of record with respect to the Units and shall be enforceable by any First Mortgagee:

a. In the even that the Unit Owners shall amend this Master Deed or the Condominium Association or its By-Laws to including therein any right of first refusal in connection

with the sale of a unit, such right of first refusal shall not impair the rights of a First Mortgagee to:

(i) foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or

(ii) accept a deed (or assignment) in lieu of foreclosure in the even of default by a mortgagor; or

(iii) sell or lease a Unit acquired by the First Mortgagee.

b. Any party who takes title to a Unit by foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the Condominium Association or its By-Laws;

c. Any first Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by-law shall not be liable for such Unit's unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee;

d. Except as provided by statue in case of condemnation or substantial loss to the Units and/or common elements of the Condominium, the prior written consent of the Owners of the Units (other than the Declarant) to which at least sixty-seven (67%) percent of the votes in the Association

are allocated and the approval of the First Mortgagees which have at least fifty-one (51%) percent of the votes subject to such first mortgages, shall be required to:

(i) by any act or omission, seek to abandon or terminate the Condominium; or

(ii) change the pro rata interest or obligations of any individual Unit for the purpose of:

(a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(b) Determining the pro rata share of ownership of each Unit in the common areas and facilities.

(iii) partition or subdivide any Unit; or

(iv) by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, provided that the granting of easements for public facilities or for other public purposes consistent with the intended use of the common areas and facilities shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; or

(v) use hazard insurance proceed on account of losses to either the Units or the common areas and facilities for other than repair, replacement or reconstruction thereof; or

(vi) add or amend any material provisions of the Condominium documents of the Condominium which establish, provide for, govern or regulate any of the following:

(a) voting;

(b) assessments, assessment liens or subordination of any such liens;

(c) reserves for maintenance, repair and replacement of the common areas (or Units, if applicable);

(d) insurance or fidelity bonds;

(e) rights to use common areas;

(f) responsibility for maintenance and repair of several portions of the Condominium;

(g) expansion or contraction of the Condominium or addition, annexation or withdrawal of property to or from the project, except as in this Master Deed reserved;

(h) boundaries of any Unit;

(i) the interest in the common areas;

(j) convertibility of Units into common areas or of common areas into Units;

(k) leasing of Units;

(l) imposition of any restrictions on a Unit Owner's right to sell or transfer his unit, including any right of first refusal or similar restriction;

(m) a decision by the Association to establish self management when professional management had been required previously by a First Mortgagee;

(n) restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than specified in this Master Deed or By-Laws;

(o) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or

(p) any provisions which are for the express benefit of mortgage holders First Mortgagees or eligible insurers or guarantors of first mortgages on Unit.

In addition, prior written consent of the First Mortgagees representing at least 67% of the votes of the mortgaged units shall be required to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium property.

If an addition or amendment does not constitute a material change, such as the correction of a technical error or the clarification of a statement, consent shall be assumed when a First

Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is made. An affidavit by the Clerk of the Board of Governors appended to the amendment naming reference to this provision stating that notice was given as above provided and no response had been received from the First Mortgagee within 30 days shall be conclusive evidence of such facts and may be relied upon by third parties with respect thereto.

e. Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of The Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole;

f. In no event shall any provision of this Master Deed of the Condominium Association or its By-Laws give a Unit Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of such Unit and/or the common areas and facilities.

g. A First Mortgagee, upon request made to the Board of Governors of the Condominium Association, shall be entitled to written notice of:

(i) any condemnation loss or any casualty loss which affects a Masterial portion of the Condominium or any Unit on which there is a first mortgage owned or held by a First Mortgagee;

(ii) any delinquency in the payment of assessment or charges owed by an Owner of a Unit subject to a first mortgage owned or held by a First Mortgagee which remains uncured for a period of sixty (60) days;

(iii) any lapse, cancellation or Masterial modification of any insurance policy or fidelity bond maintained by the Association; and

(iv) any proposed action which would require the consent of a specified percentage of First Mortgagees.

17. CONDOMINIUM CONTRACTS

Any agreement for professional management of the Condominium, or any other contract or lease with the Condominium Association entered into by the Declarant prior to the time the Declarant shall have relinquished control of the Association, may not exceed three (3) years, and further must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

18. BOOKS, RECORDS AND FINANCIAL STATEMENTS

a. The Association shall make available to the Unit Owners and lenders and to holders, insurers or guarantors of any first mortgage current copies of the Master Deed, By-Laws, other rules concerning the Condominium and books, records and financial statements of the Association. "Available" means available for inspection upon request, during the normal business hours or under other reasonable circumstances.

b. Any holder, insurer or guarantor of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.

19. CONSTRUCTION OF DOCUMENTS

a. The Master Deed and the By-Laws of the Association shall not be altered, amended or otherwise changed if such alteration or amendment will in any manner disqualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA).

All provisions of the Master Deed and of the said By-Laws shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

b. In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed, in the By-Laws of the Association or between the Master Deed and the By-Laws of the Association, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control.

20. MISCELLANEOUS

a. Captions. The captions herein inserted are only as a matter of convenience and for reference and in no way define, limit or described the scope of this Master Deed nor the intent of any provision hereof.

b. Gender. The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

c. Waiver. No provisions contained in this Master Deed shall be deemed to have been waived or abrogated by reason of any failure to enforce same, irrespective of the number of violations or breaches which occur.

d. Invalidity. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity, enforcement or effect of the other provisions of this Master Deed and, in such event all of the other provisions of this Master Deed shall continue in full force and effect as though such invalid provision had never been included herein.

e. Conflicts. This Master Deed is set forth to comply with the requirements of Massachusetts General Laws Chapter 183A and the mandatory provisions of such statute shall prevail.

f. Covenants and Restrictions. The covenants and restrictions contained in this Master Deed shall run with the land and shall inure to the benefit of and be enforceable by the Declarant, the Association and the Unit Owners acting through the Association or their respective legal representatives, heirs, successors and assigns. The property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, charges and liens subject to such rights of amendment and termination herein set forth. A Unit Owner shall, in the event any action be instituted to enforce these restrictions or to collect common or Unit charges, in addition to the court order enforcing said restriction or ordering said payment of common or Unit charges, be liable for the legal expenses incurred by the Association and shall be collected as any other common charge from said Unit Owner.

g. Duration of Restrictions. The restrictions upon the use of the property imposed by this Master Deed shall last for a period of ninety-nine (99) years.

WITNESS my hand and seal this _____ day of _____, 1989.

_____
Roy C. Smith, Trustee of
High Street PCRC Trust

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. ,1989

Then personally appeared the above-named Roy C. Smith, Trustee of High Street PCRC Trust as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

_____
Notary Public
My Commission Expires:

The Town of Acton hereby assents to the foregoing Master Deed and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June , 1989, recorded in Book , Page with the Middlesex South District Registry of Deeds.

TOWN OF ACTON

By:_____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss June , 1989

Then personally appeared the above named and acknowledged the foregoing to be the free act and deed of the Town of Acton, before me,

_____
Notary Public
My Commission Expires:

k/audubonhilldeed

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE A

A certain parcel of land with the buildings thereon, situated on the Easterly side of High Street in Acton, Middlesex County, Massachusetts, being shown as an area containing acres of land, more or less, as shown on a plan entitled, "Site Plan for Audubon Hill North Condominium, Acton, Mass., to be recorded herewith, and to which plan reference may be had for a more particular description.

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE B

UNIT NO.	BUILDING NO.	SQUARE FOOTAGE
101		
103		
105		
107		
109		
111		

The Unit Designation of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Condominium Plans hereinbefore mentioned and recorded herewith, which is incorporated herein and made a part hereof.

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE C

UNIT NO.	BUILDING NO.	PERCENTAGE OF INTEREST
101		
103		
105		
107		
109		
111		

As of the date of recording of the Master Deed, as amended, the Declarant in setting the percentages as set forth in this Schedule C, has complied with the provisions of Chapter 183(a) and pursuant to the provisions of the Master Deed, including but not limited to Paragraphs 1, 11 and 14 of the same, the Declarant reserves the right to add additional Phases, in an order so desired, including the right to include Sub-phases within any such Phase, as well as the right to eliminate any Phases and modify the percentage of interest so as at all times to be in compliance with the aforesaid provisions of Chapter 183(a). The Declarant will modify the percentage of interest of all subsequent Phases in compliance with the aforesaid provisions of Chapter 183(a) at the time of creation of such additional Phases or Sub-phases, as the same may be required depending on the type and mix of the units in the said future Phases.

k/audnomd

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

June 9, 1989

FEDERAL EXPRESS

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

re: Audubon Hill
Comprehensive Development Agreement

Dear Mr. Johnson:

Norm Cohen, Vic Bass and I spoke with John Murray yesterday concerning the draft comprehensive development agreement and the status of litigation concerning Audubon Hill. During our discussions John decided that it would be useful for you and the selectmen to review the draft of the comprehensive development agreement.

I have enclosed a copy of the draft agreement. The draft would give the town a great deal of authority over the planned development, and continuing oversight of the development after every individual unit has been sold. This draft is intended to be used for discussion purposes only.

As we discussed with John, the Town should provide Palmer & Dodge with input into three important features of the draft. First, because sale of thirty five percent of the condominium units will be restricted to those under a certain income, the Town should decide what type of income restrictions should be used to determine who is eligible to purchase a unit in the project. It is possible that these units could be counted towards the state's obligation to make 10% of its housing "affordable" under state statutes. Article 3 of the draft indicates one method of establishing net income restrictions, but does not provide a formula for

determining who would be eligible to purchase units. Roy Smith (the "Developer") has proposed a simple formula that we could discuss with the Town.

Second, the Developer must complete certain activities in order to comply with the terms of the development agreement. For example, he must establish conservation restrictions on a portion of his property, and must build a system of trails across conservation land. In addition he must build a senior center and transfer it to the Town upon completion. The Town should decide at what stage of construction these activities must occur. If these activities are to occur late in the development, the Town will have less leverage to ensure that they actually do occur.

Third, the Town must decide to what degree it needs to control the Developer's activities during and after construction. The current draft places stringent restrictions upon the Developer. As you review the draft, you may decide to be somewhat more lenient.

Please contact me or David Bannard after you and the selectmen have reviewed the draft. If you wish, David or I could meet with you to review the document.

Sincerely,

Robert Orsi

RO/rj
Enclosure
cc: Norman P. Cohen, Esquire
David Y. Bannard, Esquire

P&D Draft 6/9/89
For Discussion
Purposes Only

COMPREHENSIVE DEVELOPMENT AGREEMENT

This Comprehensive Development Agreement (the "Agreement") is made as of the ____ day of _____, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts, acting by and through its Board of Selection, and Roy C. Smith as Trustee of High Street PCRC Trust u/d/t _____. Roy C. Smith individually and as Trustee, any corporation, partnership or other entity undertaking a development pursuant to the terms of this Agreement in which Roy C. Smith has an interest and any of their successors or assigns shall hereinafter be referred to collectively as the "Developer".

RECITALS

Reference is made to the following facts:

A. At a Special Town Meeting held in 1984, the Developer presented a written proposal (the "Development Proposal") for the development of several parcels of land containing approximately 71 acres as more particularly described on Exhibit __ attached hereto (the "Development Property"), seeking the approval of Town Meeting to designate the Development Property as a Planned Conservation Residential Community (PCRC) District pursuant to Section 9 of the Town Zoning By-Law. The Town Meeting made such a designation as to the Development Property.

B. By deed dated March 25, 1985, recorded with the Middlesex South Registry of Deeds at Book 16067, Page 278, Roy C. Smith, individually, acquired a portion of the Development Property consisting of an approximately 18 acre parcel of land as more particularly described in the deed thereto dated _____, recorded with said Deeds in Book ___, Page ___. Roy C. Smith, individually, conveyed this 18 acre parcel by deed dated _____, recorded with said Deeds in Book ___, Page ___, to _____.

C. By deed dated October 8, 1987 from Norman R. Veenstra, recorded with said Deeds in Book ___. Page ___, the Developer acquired another portion of the Development Property consisting of three parcels of land containing approximately 39 acres more or less, as more particularly described in said deed.

D. By deed October 8, 1987 from Norman R. Veenstra, filed with the Middlesex South Registry District of the Land Court as Certificate No. _____, the Developer has

acquired the balance of the Development Property consisting of a parcel of land containing approximately 14 acres more or less, as more particularly described in the deed thereto.

E. _____ is the owner of record as of the date hereof of the Development Property.

F. The Developer agreed at public meetings held with the Town of August 25, 1987, and September 2, 1987, to develop the Development Property substantially in accordance with the terms and conditions of the Development Proposal as generally illustrated on a plan entitled "Overall Land Use Plan of Land in Acton Mass," dated October 16, 1984, and in accordance with the terms and conditions of a special permit to be issued by the Town of Acton acting through its Planning Board under the PCRC District, and in no other manner.

G. On October 9, 1987, the Developer and the Town entered into a Development Agreement, a First Option Agreement and a Subordinated Option Agreement all incorporated by reference herein. The Development Agreement required that the Developer and the Town enter into a Comprehensive Development Agreement upon the issuance of the special permit described in the preceding paragraph (F).

H. On March 6, 1989 the Town of Acton, acting through its Planning Board, approved, subject to certain terms and conditions, the Developer's application for a Planned Conservation Residential Community special permit filed with a plan entitled "Audubon Hill in Acton, Mass.," dated August 1, 1988 (the "Special Permit"). On March 15, 1989, the Town of Acton, acting through its Conservation Commission, issued to the Developer an Order of Conditions with respect to the Development Property.

I. The Developer and the Town now wish to incorporate the terms of all prior permits, conditions, orders and agreements into this Comprehensive Development Agreement that will govern the relationship of the parties with respect to the Development Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS

The defined terms used in this Agreement shall have the meanings specified below:

Act: means Chapter 183 of the General Laws of Massachusetts, as it may be amended.

Affidavit of Compliance: means an affidavit executed as provided in Section _____ hereof.

Affiliated Party: means as to any Person, (i) a member of the Immediate Family of such Person, (ii) the estate of any Person referred to in the preceding clause, (iii) the trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) and (ii), (iv) an entity of which a majority of the voting interest is owned by any one or more of the Persons referred to in the preceding clauses (i) through (iii), or (v) a Person who is an officer, director, trustee, employee, stockholder (15% or more) or partner of any entity which is a Person referred to in the preceding clauses (i) through (iv).

Agreement: means this Comprehensive Development Agreement, as it may be amended from time to time.

Appraised Value: means, as to a Restricted Unit, the fair market value of the Restricted Unit as determined by a real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts who is selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

Approval Documents: means all documents required by the Town or the Town Designee in connection with the sale, conveyance or other transfer of a Restricted Unit, including, without limitation, an executed counterpart original of the purchase and sale agreement for the sale of any such Unit, copies of the proposed purchaser's federal income tax returns for the three years most recently passed (or an affidavit stating that the proposed purchaser did not file such a return for any of those years) and all Affidavits of Compliance which may be required.

Averitt Land: means that land more fully described in Exhibit __ attached hereto and incorporated herein by reference.

Completion of Construction: means, as to any phase of the Project, that each of the following has occurred: (i) an architect duly licensed and qualified under the laws of the Commonwealth of Massachusetts has certified to the substantial completion of construction of that phase of the Project; (ii) the Town Designee has inspected that phase of the Project and determined that such phase is in compliance with the terms of this Agreement, the Special Permit and the Order of Conditions, as each may apply; and (iii) an authorized Town official has issued a certificate of occupancy, if one is required, for that phase of the Project.

Condominium: means the Audubon Hill North and the Audubon Hill South Condominium, or any phase thereof, as contemplated in the Plan, established according to the provisions of the Act and built in accordance with this Agreement, the Special Permit and the Order of Conditions.

Condominium Documents: means those documents required under the provisions of the Act to submit the Condominium to the condominium form of ownership, in compliance and in accordance with the provisions of the Act.

Conservation Administrator: means that Person designated from time to time and employed by the Town as the Conservation Administrator or any Person acting in a successor position so designated by the Town.

Conservation Area: means that area of the Development Property, more fully described in Exhibit ____ attached hereto, subject to a certain conservation deed restriction as more fully set out in Exhibit _____, attached hereto and incorporated herein by reference.

Construction Lender: means a bank, insurance company, savings and loan association, trust company or other institutional lender, or a noninstitutional lender which is approved in writing in advance by the Town, who holds a Construction Mortgage.

Conservation Restriction: means the conservation restriction substantially in the form of Exhibit ____ that is to be placed on the Option A Property by the Developer pursuant to the terms of this Agreement.

Construction Mortgage: means a mortgage on the Development Property given by the Developer to secure the payment of one or more loans which may be used only for the financing or refinancing of the construction of the Project

in accordance with the terms of this Agreement, the Special Permit, the Order of Conditions and one or more construction loan agreements consistent with the aforesaid documents.

Development Property: means the real property upon which the Developer intends to construct the Project, as more fully described in Exhibit ____ attached hereto and incorporated herein by reference.

Developer: means Roy C. Smith as Trustee of High Street PCRC Trust, Roy C. Smith individually, and any corporation, partnership, trust or other entity undertaking development pursuant to this Agreement in which Roy C. Smith has an interest, and any successor or assign of any such entity or Roy C. Smith individually or as Trustee.

Eligible Purchaser: means a Senior Citizen who satisfies the criteria set forth in the Guidelines in effect at the time the Senior Citizen is ready and willing to purchase a Unit. In addition, the Town and the Acton Housing Authority shall also be deemed Eligible Purchasers.

First Option Agreement: means the option agreement entered into between the Developer and the Town on October 9, 1987 concerning the Option A Property, recorded with the Registry of Deeds at Book _____, Page _____, and incorporated herein by reference.

Guidelines: means the program documents attached hereto as Exhibit __ and incorporated herein by reference, as they may be amended from time to time by the Town, which establish the criteria by which an Eligible Purchaser shall be determined.

Immediate Family: means with respect to any Person, his or her spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

Improvements: means those buildings, structures and other improvements, including without limitation landscaping and paving, which shall be constructed on the Development Property in accordance with the Special Permit, the Plan, the Order of Conditions and this Agreement.

Maximum Resale Price: means, as to any Restricted Unit, the price, as of a given date, equal to seventy-five percent (75%) of the Appraised Value of such Unit.

Option A: means the option granted by the Developer to the Town with respect to the Option A Property under the terms of the First Option Agreement.

Option B: means the subordinated option granted by the Developer to the Town with respect to the Option B Property under the terms of the Subordinated Option Agreement.

Option A Property: means that portion of the Development Property, designated as Conservation Area, more fully described on Exhibit _____ attached hereto and incorporated herein by reference.

Option B Property: means that portion of the Development Property described on Exhibit ____ attached hereto and incorporated herein by reference.

Order of Conditions: means a certain order of conditions, DEQE File number 85-265, issued to the High Street PCRC Trust, Roy Smith, Trustee, by the Acton Conservation Commission pursuant to G.L. c.131, §40 on March 15, 1989 and incorporated herein by reference, which imposes certain terms and conditions on the development of the Project.

Person: means any individual, or general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, successors and assigns of such Person where the context so admits.

Plan: means a plan entitled "Audubon Hill, Acton, Mass.", dated August 1st, 1988, for land owned by High Street PCRC Trust, drawn by Acton Survey & Engineering, Inc., Gauchat Architects, Inc., and Carrol R. Johnson & Associates, Inc., consisting of 46 sheets and referenced as Exhibit 1 to the Special Permit.

Project: means the planning, construction, landscaping and all other related or similar development of the Development Property in accordance with the Plan, this Agreement, the Special Permit and the Order of Conditions, including, without limitation, the planning, construction and landscaping of the Condominium, the Conservation Area and the Senior Center.

Registry of Deeds: means the Middlesex South Registry of Deeds.

Registry District: means the Middlesex South Registry District of the Land Court.

Restricted Unit: means a Unit that is subject to certain restrictions on the resale price of such Unit which are set forth in Exhibit _____ attached hereto. These restrictions shall be incorporated into the Master Deed of

the Condominium, and are incorporated herein by reference, for the benefit of the Town, its successors and assigns.

Senior Center: means that Unit in the Condominium which shall be constructed by the Developer as contemplated in the Plan, the Special Permit and the Order of Conditions and deeded to the Town under the terms set out in Section _____ hereof, for use by the Town as a senior citizen's center.

Senior Citizen: means any natural Person fifty-five years of age or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a Unit to such Person.

Special Permit: means that petition of the PCRC High Street Trust, Roy C. Smith, Trustee, for a Planned Conservation Residential Community Special Permit which was granted by the Acton Planning Board on March 4, 1989, subject to and with the benefit of certain conditions, modifications, waivers and limitations, received and filed by the Acton Town Clerk on March 6, 1989 and recorded with the Registry of Deeds at Book _____, Page _____ and the Registry District as Document No. _____.

Subordinated Option: means the option agreement entered into between the Developer and the Town on October 9, 1987 concerning the Option B Property, recorded with the Registry of Deeds at Book _____, Page _____ and with the Registry District as Document No. _____, incorporated herein by reference.

Town: means the Town of Acton, acting through its Board of Selectmen.

Town Counsel: means Norman P. Cohen, Esquire, Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108, or such successor counsel, duly admitted to the practice of law in the Commonwealth of Massachusetts, as is designated by the Town.

Town Designee: means any person or entity designated by the Town in accordance with this Agreement to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or any designee of the Developer. The Town hereby designates _____ as the initial Town Designee and hereby confirms that the Town Designee shall have

authority to give the notices, approvals and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

Unit: means a single condominium unit so designated in the Master Deed of the Condominium.

Unrestricted Unit: means a Unit not subject to the restrictions contained in this Agreement with regard to resale price and purchase eligibility imposed on Restricted Units.

ARTICLE II: DEVELOPMENT

2.1. The Development.

The Developer covenants, promises and agrees, for itself, its successors and assigns, to develop the Development Property as follows:

(a) to undertake and complete the development of the Development Property in accordance with the Plan and any plans and specifications referred to in the Special Permit;

(b) to comply in all respects with the terms and conditions of the Special Permit, the Order of Conditions and all other agreements between the Town and the Developer; and

(c) further, to comply with all building, zoning and other applicable laws, ordinances and regulations.

The Project shall be completed to the satisfaction of the Town on or before _____, 19__.

2.2. Conservation Land.

(a) The Developer acknowledges and agrees that the Option A Property shall be subject to a Conservation Restriction in the form of Exhibit __ attached hereto, which Conservation Restriction shall be recorded against the Option A Property prior to the commencement of construction of any Improvements. The Developer will record the Conservation Restriction within fourteen (14) days after the date of this Agreement.

(b) The Developer will grant to the Town an easement in the form of Exhibit __ attached hereto, encumbering

the location shown generally on the Plan as "Grav. Drive" and _____ and for purposes of constructing and maintaining one or more public ways and for all other uses customarily associated with such ways. Such easement shall be granted prior to the commencement of construction of any of Units.

(c) The Developer will construct, in accordance with procedures required by the Town of Acton Engineering Administrator, at its sole expense, (i) a gravel road on and across the easements on the Option A Property granted pursuant to subparagraph (b) above for the passage of vehicles from the area shown as "Proposed 18 Ft. Wide Drive" on the Plan to the Averitt Land, and (ii) a five car gravel parking lot on the aforesaid Averitt Land at a location to be designated by the Town.

(d) The Developer will design and lay out a system of trails over the existing Averitt conservation land and clear a burnt area of that land, and bury tree stumps removed from this area, pursuant to standards, conditions and procedures required by the Conservation Administrator. The Developer will bury such stumps in the area designated "_____" on the Plan.

(e) The Developer shall be entitled to bury stumps removed in connection with the Project in the cleared area of the Averitt Land only in accordance with conditions and procedures established by the Conservation Administrator. The Developer, shall restore such cleared area to an open field in accordance with conditions and procedures required by the Conservation Administrator .

(f) The Developer shall present to the Town no later than _____, a survey prepared by a registered land surveyor and approved by the Conservation Administrator, indicating the location of the easement area, gravel drives, proposed trails, and proposed dump for the removed tree stumps. The Developer shall obtain the approval of the Conservation Administrator to the location of the easement area, the gravel drives, the trails and the dump.

(g) The improvements described in this Section 2.2 (the "Conservation Land Improvements") shall be completed by the Developer on or before _____, 19___.

(h) Within ten (10) days after the Developer has given the Town Designee notice that the Developer has (i) recorded the Conservation Restriction and supplied the Town Designee with a copy of the certified copy of the Conservation Restriction containing all appropriate recording information and (ii) completed construction of the Conservation Land Improvements, the Town Designee will determine whether the Conservation Land Improvements comply with the terms of this Agreement. If the Town Designee determines that the Conservation Land Improvements are acceptable to the Town, the Town shall execute, in form suitable for recording, a release of the First Option Agreement, and deliver such release to the Developer. The Developer at its sole expense shall promptly record such release and provide the Town Designee with a certified copy of such release containing all appropriate recording information.

(i) If the Town Designee disapproves of any of the Conservation Land Improvements, he or she shall so notify the Developer, in writing, specifying the reasons therefor. In the event of such disapproval, the Developer shall promptly correct any defects noted by the Town Designee and the Town Designee shall then reinspect the Conservation Land Improvements as provided in Section 2.2 (h) above.

ARTICLE III: RESTRICTION ON CONDOMINIUM DEVELOPMENT

3.1. Establishment of Condominium.

(a) Within 30 days from the date of this Agreement, the Developer shall deliver to the Town Designee, with a copy to the Town Counsel, the Condominium Documents. The forms of the Condominium Documents, including without limitation, the declaration of trust of the Condominium trust, the by-laws of the Condominium trust and the master deed and Unit deeds shall be subject to the approval of the Town. The Condominium's master deed shall incorporate the restrictions set forth in the form attached as Exhibit __. Such approval shall not be unreasonably withheld or delayed, but the Town may disapprove of the Condominium Documents or any of them which are not consistent with the provisions or intent of this Agreement. The Condominium shall be comprised of seventy (70) residential Units plus the Senior Center.

If the Town disapproves of the proposed form of any of the Condominium Documents delivered to it as provided herein, it shall so notify the Developer in writing. If no written notice of disapproval is sent to Developer within thirty (30) days after delivery of the proposed Condominium Documents to the Town, or delivery of revised Condominium documents as hereinafter provided, the Condominium Documents as so submitted or resubmitted, as the case may be, shall be deemed approved. In the event the Condominium Documents are disapproved, the Developer shall, within thirty (30) days after the date Developer receives written notice of disapproval, deliver to the Town, in the manner hereinabove provided, revised Condominium Documents altered to meet the grounds for disapproval. Such resubmitted Condominium Documents shall be subject to review and approval by the Town in accordance with the procedure hereinabove provided for an original submission, until the Condominium Documents shall be approved by the Town. The Condominium Documents will provide that the Developer shall not exercise its voting rights under the Condominium Documents to amend any of the Condominium Documents without the prior written consent of the Town, which consent shall not be unreasonably withheld.

The approval of each of the Condominium Documents by the Town shall be conclusively established by an endorsement thereon signed and acknowledged by the Town Designee or any member of the Board of Selectmen of the Town stating that such document has been approved by the Town of Acton, except that only the first Unit deed and not subsequent Unit deeds need contain such endorsement.

(b) Following approval of the Condominium Documents by the Town, the Developer at its sole expense shall record the declaration of the Condominium trust, the by-laws of the Condominium and the Condominium master deed, all as approved by the Town, and take all other actions necessary to lawfully and validly submit the Development Property to the provisions of Chapter 183A of the Massachusetts General Laws, on or before the date thirty (30) days after Completion of Construction and in no event later than _____, 19___. The Developer shall promptly deliver to the Town copies of all of the Condominium Documents as recorded, indicating the place of recording of same in the Registry of Deeds and the Registry District.

3.2. Improvements on the Development Property.

Except as otherwise expressly provided in this Agreement, no building, structure or other improvement shall be constructed or maintained on the Development Property, nor any alteration made in the exterior of the building located on the Development Property except as contemplated permitted by the terms of the Special Permit the Plan, the Order of Conditions and this Agreement.

3.3. Sale of Condominium Units by Developer.

(a) Every Unit deed conveying an interest in a Unit shall contain a statement that such Unit is subject to the terms and conditions of this Agreement and shall contain a reference to the place of recording of this Agreement with the Registry of Deeds and the Registry District.

(b) Every sale, lease, assignment, license, resale, sublease or other conveyance of an interest in every Unit whether by the Developer or its successors, heirs or assigns, for a period of forty (40) years from the date of this Agreement, shall be to a Senior Citizen or to a Senior Citizen and his or her spouse. Such Senior Citizen or Senior Citizen and spouse acquiring an interest in a Unit shall utilize such Unit as their principal residence. Each Unit deed shall contain a statement incorporating the provisions of this paragraph 3.3 (b).

(c) At least thirty-five percent (35%) of the Units, excepting only the Senior Center Unit, constructed on the Development Property shall be sold by the Developer subject to the resale restrictions described in this Agreement and the Guidelines attached hereto. These restrictions shall be incorporated into the Condominium's master deed and shall inure to the benefit of the Town, its successors and assigns.

(d) Without limitation the Developer will at all times use its best efforts to market and sell all Units.

(e) Every unit deed conveying a Restricted Unit or an interest therein shall recite the resale restrictions described in Section 3.4, and contain a statement that such Unit is a Restricted Unit subject to the provisions hereof and of the Special Permit, and shall include a reference to the place of recording of such documents with the Registry of Deeds and the Registry District.

(f) The Developer agrees to convey five (5) Units to the Acton Housing Authority for the price of sixty five thousand dollars ($65,000) for each unit on the terms set forth on the attached hereto as Exhibit __ [Greater Boston Real Estate Board standard condominium Purchase and Sale Agreement]. The Developer further agrees that two (2) of the Units referred to in the previous sentence shall be constructed as part of phase 1 of the Project, two (2) of such Units shall be constructed as part of phase 2 of the Project and one (1) such Unit shall be constructed as part of phase 3 of the Project. Should the Project be constructed in more or fewer than three phases, the ratio of the aforesaid Units to the total number of Units completed in each phase shall remain constant. The date of conveyance of the deed to each such Unit shall be thirty (30) days following the Completion of Construction of the applicable phase of the Project. The Developer and the Town agree that time shall be of the essence of this agreement to convey the aforesaid Units. The aforesaid Units shall be Restricted Units for the purposes of this Agreement.

3.4. Resale Restrictions.

(a) Age Restrictions. For a period of forty (40) years from the date of this Agreement, no Unit or any interest therein shall be sold, leased, assigned, licensed, subleased, conveyed or otherwise transferred, and no attempted sale, lease, assignment, license, sublease, conveyance or other transfer shall be valid, unless the Person or Persons acquiring such Unit or interest shall be one or two Senior Citizens, or a Senior Citizen and his or her spouse and such Person or Persons shall agree to utilize such Unit as their principal residence.

(b) Price Restrictions. For a period of forty (40) years from the date of this Agreement no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit for and in connection with the transfer of such Restricted Unit, is equal to or less than the Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such Unit.

(c) Income Restrictions. For a period of forty (40) years from the date of this Agreement, no Restricted Unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Rental Restrictions: No Restricted Unit shall be leased, sublet or licensed without the written consent of the Town Designee, which consent shall not be unreasonably withheld, provided that it shall be reasonable for the Town Designee to take into account the income of a proposed tenant relative to the then-applicable re-sale restrictions contained in this Agreement in giving or withholding such consent, and provided that the proposed tenant is a Senior Citizen.

(e) Affidavit of Compliance with Restrictions: Prior to the sale of any Restricted Unit by the Developer, its successors or assigns, or any subsequent owner of such Restricted Unit, the Developer, its successors or assigns, or such subsequent owner, as the case may be, shall deliver to the Town, as further provided below, an affidavit executed under oath and acknowledged by the prospective purchaser of the Unit identifying the Unit in question, the then-current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the prospective purchaser's household, and stating and affirming:

(i) [net income restrictions]

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such prospective purchaser to the seller for or in connection with the transfer of the Unit or any interest therein.

In addition, the seller of the Unit shall execute under oath, acknowledge and deliver to the Town an affidavit identifying the Unit in question, the seller and prospective purchaser thereof, and the agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such prospective purchaser to the seller for or in

connection with the transfer of the Unit or any interest therein and, in the case of a proposed sale by a seller other than the Developer, the price paid for such Unit by such seller and calculation of the Maximum Resale Price of such Unit as of a date not later than the date set for closing of the proposed sale.

Certificate from Town: Prior to or upon the execution by the Developer, its successors or assigns and a prospective purchaser of any contract or agreement for the sale of any Restricted Unit in the Condominium, or execution by any subsequent owner of any Restricted Unit and a prospective purchaser thereof of any such contract or agreement, and in any event at least twenty (20) days prior to the closing of any sale, conveyance or transfer of any such Unit, the Developer, its successors or assigns, or such subsequent owner shall deliver (i) a copy of such contract or agreement (whether executed or proposed) and (ii) the affidavits of compliance with restrictions described above (collectively, the "Approval Documents"), to the Town. The Approval Documents shall be delivered to the Town at its mailing address set forth on the first page of this Deed or such other address for the Town of Acton as shall appear of record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the prospective purchaser of the Unit and the seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the prospective purchaser, and the sale or re-sale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the seller of the Approval Documents, the Town Designee shall prepare and deliver to the seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(a) a certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the seller thereof, the prospective purchaser thereof, and the purchase price therefor, and stating:

(i) that the proposed sale or transfer of the Unit to the prospective purchaser is in compliance with the restrictions contained in this Deed; or

(ii) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(b) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income of the prospective purchaser, and the sale or re-sale price, as the case may be, comply with the restrictions contained herein, and specifying each particular in which the Approval Documents are not satisfactory or the prospective purchaser or the sale or re-sale price does not comply with such restrictions. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (a) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any Restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in (a) above referring to such Unit and such purchaser and so executed by the Town Designee as conclusive evidence of the matters stated therein and may record such certificate in connection with conveyance of the Unit, provided that, in the case of a certificate under (a)(i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Unit pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the prospective purchaser may execute and the seller may deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

(c) If in any instance the Town Designee shall give notice of the type referred to in (b) above, the seller of the Unit in question receiving such notice may submit to the Town Designee amended or additional affidavits or other documents. If in any such instance the Town Designee shall not have issued a certificate of the type referred to in (a) above on or before the date thirty (30) days after the date on which the Town Designee shall have given notice of the

type referred to in (b) above, or if the Town Designee shall not have given notice in the form of (a) or (b) above after expiration of ten (10) business days from receipt of the Approval Documents by the Town Designee, or if the Town Designee shall fail to consent to the proposed lease, sublease or license ("rental") of a Unit by its Owner within 45 days from receipt by the Town of written request for such consent, such seller or owner may request arbitration by notice of such request to the Town Designee. If such notice shall be so given, the parties shall submit the determination of the conformity of the form and substance of the Approval Documents and the compliance of the annual household income of the prospective purchaser and the proposed sale or re-sale price with the restrictions referred to herein, including any questions or objections specified by the Town Designee in any notice given under (b) above, or the reasonableness of the refusal to consent to such rental, as the case may be, to the majority decision of a panel of three disinterested persons experienced in real estate, one to be selected by the Town Designee, one to be selected by the seller (the respective fees, if any, of each such person to be paid by the party selecting such person) and the third to be selected by such two persons so selected (the fees, if any, of such third person to be divided equally between the parties), and the parties shall be bound by the results of the majority decision of such panel. The Town Designee and the seller or owner of the Unit in question shall execute, acknowledge and record a certificate stating that arbitration has been commenced and naming the members of the panel. If the majority of such panel determines that the Approval Documents conform in form and substance to the terms hereof and that the annual household income of the prospective purchaser and the proposed sale or re-sale price comply with the restrictions contained herein and that the sale should be permitted, or that the refusal to consent to such rental is unreasonable, then such panel shall report such determination by written notice signed by each member of the panel to the Town Designee and to the seller, and, upon receipt of such notice, the Town Designee shall issue the certificate described in (a)(i) above, or consent to such rental, as the case may be, in accordance with the panel's determination. If the Town Designee shall not have issued such certificate within five (5) days after receipt of such written notice from such panel of its determinations and its conclusion that the sale or rental should be permitted, then a majority of such panel may issue such certificate in the form prescribed above signed and acknowledged by a majority of such panel, and such certificate shall have the same force and effect as if issued by the Town Designee. If the majority of such panel determines that the Approval Documents do not conform in form or substance to the terms hereof or that the annual household income of the prospective purchaser or the proposed sale or re-sale price does not comply with the restrictions

contained herein, or that the refusal to consent to such rental is not unreasonable, then such panel shall report such determination by written notice signed by each member of the panel to the Town Designee and the seller, and such determination shall be final and binding as between the parties with respect to the matters submitted to the panel for determination.

Within ten (10) days of the closing of the sale or rental of any Restricted Unit by the Developer, its successors or assigns, the seller shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records, or a true copy of the rental agreement, as the case may be. Failure of the Developer, its successors or assigns to comply with the preceding sentence shall not affect the validity of such Unit deed.

(f) Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

ARTICLE IV. SECURITY FOR PERFORMANCE OF DEVELOPER'S OBLIGATIONS

4.1. As security for the performance of Developer's obligations hereunder, under this Agreement, the Special Permit, the Order of Conditions, and any other covenant and agreement with the Town, the Developer has done the following:

(a) posted posted a bond in the amount of $_____ with the Planning Board. The purpose of such bond is to ensure that the Developer will construct all improvements in accordance with the terms and conditions of this Agreement, the Special Permit and the Order of Conditions. The Planning Board shall determine the amount of the bond, the termination date of the bond, and shall administer the bond.

(b) pursuant to the First Option Agreement the Developer granted the Town Option A which, for a period of forty years, granted the Town the exclusive option to purchase the Option A Property and the improvements thereon, if any, and any rights appurtenant thereto (the "Option A Property") for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 hereof.

(c) Pursuant to the Subordinated Option Agreement, the Developer granted the Town the exclusive option for a period of forty years to purchase all or any portion of the Option B Property and the improvements thereon, if any, and any rights appurtenant thereto, for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 of this Agreement.

4.2. Encumbrances/Subordination. Developer agrees that prior to the Closing Date, Developer will not voluntarily convey, transfer, or otherwise dispose of the Development Property; and Developer agrees that it will not mortgage, pledge or refinance the Development Property in such a manner as would prevent, or interfere with performance under this Agreement by Developer. Notwithstanding the foregoing, the Town hereby acknowledges that Option B shall be subject and subordinate to a certain Mortgage Agreement dated October 9, 1987 between Developer and Shawmut Bank, N.A. recorded with the Registry of Deeds at Book ____, Page ____, and to the interest of any other Construction Mortgage.

ARTICLE V. SENIOR CENTER

[Leave Blank]

ARTICLE VI. TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

6.1. No Transfer: The Developer agrees that it will not, prior to conveyance of all Units in the Condominium to unaffiliated third parties, including the conveyance of the Senior Center to the Town or its nominee, make or suffer to be made any assignment or any other transfer of any of its interest in the Property or any portion thereof or in this Agreement, other than sales of Units in accordance with the provision of this Agreement except with the prior written approval of the Town. In order to receive such approval by the Town, a transferee or transferees shall have expressly assumed, for themselves and their successors and assigns, by written instrument satisfactory to the Town, all obligations

of the Developer provided in this Agreement, and all legal documents employed in affecting a transfer pursuant to this Section 6.1 shall have been submitted to and approved by the Town; provided, however, that Developer may grant one or more Construction Mortgage on the Property to secure the payment of any loan or loans obtained by the Developer from a Construction Lender. The Developer shall deliver a copy of any Construction Mortgage and construction loan agreement to the Town Designee.

The fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have expressly assumed all of the obligations of the Developer hereunder and all conditions and restrictions contained herein, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Town of or with respect to any rights, conditions or restrictions with respect to the Development Property or the construction of the Improvements thereon; it being the intent of this section, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership of the Development Property shall operate, legally or practically, to deprive or limit the Town of or with respect to any such rights, conditions or restrictions provided in or resulting from this Agreement with respect to the Development Property and the construction of the improvements thereon that the Town would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Town to the contrary, no such transfer or approval thereof by the Town shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the improvements, from any of its obligations with respect thereto.

6.2. <u>Construction Mortgage; Rights and Obligations of Construction Lender:</u>

(a) No Construction Lender shall be deemed to have assumed or to be bound to perform the obligations of the Developer hereunder by reason of having acquired an interest in the Development Property for security purposes except as provided herein. A Construction Lender shall have the right to perform any action in order to cure or make good any default in the performance of the Developer's obligations under this Agreement, and the Town

shall accept such performance by the Construction Lender to the same extent as if the same were performed by the Developer. If the Construction Lender shall acquire or succeed to the Developer's interests in the Development Property by reason of foreclosure or similar remedial action or upon conveyance of the Development Property in lieu of foreclosure, the Construction Lender shall assume only the obligations of the Developer accruing hereunder during the period in which the Construction Lender holds possession of the Property or owns the Developer's interest therein. The Town agrees that the Construction Lender may sell, assign or otherwise dispose of the Developer's interest to which it has so succeeded or which it has so acquired, provided that the transferee shall agree With the Town, in written form acceptable to the Town, to assume all covenants, agreements and obligations of the Developer hereunder. Upon any such sale, assignment or disposition, such Construction Lender shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement after the effective date of such sale.

(b) If a Construction Lender shall by written notice to the Town notify the Town of the execution, delivery and recording of a Construction Mortgage, and of the name and address of the Construction Lender for notice purposes, and of the recording reference of its Construction Mortgage, and with such notice shall furnish to the Town a true copy of its Construction Mortgage, the Town agrees that from the date of such notice until such Construction Mortgage shall be discharged or released of record, the following provisions shall apply:

(i) There shall be no cancellation, surrender, termination or modification of this Agreement by joint action of the Town and the Developer, without in each case first securing the prior written consent of each such Construction Lender;

(ii) The Town shall, upon giving to the Developer any notice of default under this Agreement, simultaneously give a copy of such notice to each such Construction Lender, and no notice of default given to the Developer shall be effective until a copy thereof has been given to each such Construction Lender. Whenever pursuant to this Agreement notice is to be

given to a Construction Lender, a notice addressed to such Construction Lender at its address specified in accordance with the foregoing provisions of this section and otherwise complying with the terms of the notice provisions of this Agreement shall conclusively be treated as having been "given" within the meaning of the respective provisions hereof calling for notice to a Construction Lender;

(iii) Each such Construction Lender shall have the same period after such notice of default has been given to it, for remedying any default of the Developer in performance of any of its obligations hereunder or causing the same to be remedied, as is given the Developer after the giving of such notice to the Developer, plus an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is continuously prosecuted with diligence, and the Town shall accept such performance by such Construction Lender as if performed by the Developer.

(iv) In the case of any such default by the Developer which is not susceptible of being cured by such Construction Lender, the Town agrees that it will take no action to obtain specific performance of this Agreement or to effect a termination of this Agreement by reason of such default without first giving to each such Construction Lender a reasonable period of time after notice under (iii) above either to obtain possession of the Property (including possession by receiver) and to cure such default, in the case of a default which can be cured when such Construction Lender has obtained possession, or to institute foreclosure proceedings and to complete such proceedings or otherwise to acquire the Developer's interest, in the case of a default which cannot be cured by such Construction Lender without first obtaining the interest of Developer in the Property; provided, however (1) that such Construction Lender shall not be required to continue such possession or to continue such foreclosure or

other proceedings if said default shall be cured, (2) that the period for obtaining possession or acquiring the interest of the Developer by foreclosure or otherwise, as the case may be, shall be extended for any period not to exceed six months during which such action is enjoined or stayed by a court of competent jurisdiction, (3) that such Construction Lender shall continue good faith efforts to perform all of the Developer's other obligations under this Agreement which are susceptible of being performed by such Construction Lender during the period of such forbearance, and (4) that nothing herein shall require any such Construction Lender to begin or continue such possession or foreclosure or other proceedings or preclude the Town from exercising (subject to the provisions of this Article VI) any rights or remedies under this Agreement with respect to any other defaults by Developer during the period of such forebearance;

(v) In the event of the termination of this Agreement for any reason, or in the case of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, the Town agrees to enter into a new agreement with the Construction Lender effective as at the date of such termination, rejection or disaffirmance, upon all the covenants and agreements, terms, provisions and limitations contained in this Agreement (including, without limitation, this section), provided that such Construction Lender shall, in writing, request the Town to enter into such new agreement within sixty (60) days after the effective date of such termination, rejection or disaffirmance. The provisions of this clause shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this clause were a separate and independent agreement, and during the period ending 60 days after the effective date of the termination, rejection or disaffirmance of this Agreement, any such Construction Lender may quietly enjoy the Property without hindrance by the Town or any person or party claiming by, through or under the Town.

(vi) Within thirty (30) days after receiving a written request so to do from any such Construction Lender, the Town shall deliver to such Construction Lender a statement, certified by an authorized official, stating either (1) that this Agreement is in full force and effect and no default hereunder has occurred and is then continuing, or (2) that this Agreement is then in default, specifying the nature and status of such default. If such statement is not delivered by the Town to the Construction Lender so requesting it within thirty (30) days after such request, such Lender may conclusively assume that this Agreement is in full force and effect and that no default hereunder has occurred and is then continuing.

ARTICLE VII. INSURANCE

7.1. Insurance Coverage:

(a) The Developer shall, until the Completion of Construction of the entire Project and establishment of the Condominium, keep the Development Property and all of the insurable property and equipment in respect of the Development Property insured by fire and extended coverage insurance and builder's risk insurance to the same extent and amount which is normally required by institutional mortgagees for similar property and equipment. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than the full insurable replacement value of the Development Property (other than land and foundations) and equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and loss thereunder shall be payable to the Developer and the Construction Lender, and to the Town as its interests may appear.

(b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

(c) Certificates of such policies and renewals thereof shall be filed with the Town on or about the effective date thereof.

7.2. Town May Procure Insurance if Developer Fails To Do So:

In the event the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Town at its option may, without limiting any other rights or remedies available to it, procure or renew such insurance, and all amounts of money paid therefor by the Town shall be payable by the Developer to the Town with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the Town to the date of payment thereof by the Developer. The Town shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by it. In the event the Town has not received payment from the Developer for the cost of any such insurance procured or renewed by the Town, plus interest accrued within twenty (20) days from the giving notice of notice by the Town to the Developer _____, the Town shall have a continuing lien against the Development Property for such amounts and shall be entitled to record such lien against the Development Property.

7.3. Developer's Obligations With Respect To Restoration And Reconstruction:

(a) Whenever any Improvement, or any part thereof, constructed on the Development Property shall be damaged or destroyed prior to Completion of Construction of the entire Project and establishment of the Condominium, conveyance of the Senior Center to the Town, and thereafter until all Units have been sold by the Developer to Persons who are not Immediate Family of the Developer, the Developer shall (to the extent permitted under the Condominium Documents, if the Condominium shall have been established at such time) proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvement, shall be deposited in a separate account of the Developer or of any Construction Lender.

(b) The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged

to a condition at least comparable to that existing at the time of such damage or destruction in accordance with the approved plans and specifications referred to in the Special Permit to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any Construction Lender, and subject to the Condominium Documents if the Condominium shall have been established at such time;

(c) Subject to the provisions of the Condominium Documents if the Condominium shall have been established at such time, the Developer, with the written approval of the Town and any Construction Lender, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and, in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be paid to the Developer, subject to the requirements of Article IV with respect to insurance proceeds arising out of damage to or destruction of the Senior Center, and subject to the rights of any Construction Lender. In such event, the covenants and restrictions contained in the Deed shall terminate as to those Improvements or portions thereof which have been damaged or destroyed and not reconstructed or restored.

(d) Developer shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been so destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any Construction Lender (or, if the conditions then prevailing require a longer period, such longer period as the Town may reasonably approve in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within eighteen (18) months after the start thereof.

ARTICLE VIII. RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A BREACH BY DEVELOPER

8.1. Failure by Developer to Complete Construction, Establish the Condominium or Discharge Encumbrances; Unauthorized Transfers of Interest:

(a) If the Developer shall fail to perform its obligations under Section 2.1.(a) of this Agreement with respect to commencement and completion of construction of Improvements in accordance herewith and with the Special Permit and the Order of Conditions; or

(b) If the Developer shall fail to establish the Condominium as provided in Section 3.1 or shall employ for such purpose any procedure or document not in accordance with this Agreement or approved in writing by the Town; or

(c) If the Developer shall place or suffer to be placed on the Development Property any encumbrance or lien not contemplated by this Agreement or authorized in writing by the Town; or

(d) If there is any transfer of the Development Property or any part thereof or interest therein in violation of this Agreement, or if the Developer shall fail to perform any other obligation under this Agreement; then the Town or Town Designee shall provide Developer with written notice of such noncompliance, which notice may be recorded. Subject to the provisions of subparagraph 8.1(f) below, in the event that Developer fails to cure such noncompliance within sixty (60) days, the Town has the right to exercise either Option A or Option B, or both options, as provided in this Agreement. Notwithstanding the foregoing, no failure of the Town to exercise Option A or Option B or both following a notice of noncompliance as set forth above, shall be construed as a waiver of any rights of the Town to exercise Option A or Option B or both under this Agreement;

the Town shall have the right to exercise Option A or Option B or both by a written notice given by the Town to Developer on or before the earlier to occur of October 9, 2027 or the date of recording of an instrument signed by the Town terminating either such Option. The Developer shall deliver the deed to the property specified in the written notice to the Town on or before the sixtieth (60th) business day following the determination of the

purchase price as set forth in Section 8.3 below, hereinafter referred to as the Closing Date.

Such written notice shall specify which option the Town is exercising.

(f) After the Town has received written notice from the Developer of the existence of an institutional lender holding a first mortgage of record on all or any portion of the Development Property, the Town shall send copies of all notices of noncompliance under this Article VIII to such institutional first mortgagee of record, and such institutional mortgagee shall have the right concurrently with Developer to cure any noncompliance. The curing of such noncompliance by any such institutional first mortgagee of record shall be treated as performance by the Developer, but nothing herein shall be deemed to impose an obligation on any institutional first mortgagee of record to cure any noncompliance under this Article VIII.

8.2. In the event that the exercise of Option A and the acquisition of the Option A Property by the Town would create a nonconformity as to zoning for the Developer's approved development of the Development Property as set forth in this Agreement, the Town shall have no right to exercise Option A to purchase the Option A Property unless, within one hundred and eighty (180) days of its notice to the Developer of noncompliance with this Development Agreement or other permits, approvals or agreements as set forth in subparagraph (a) above, the Town of Acton Zoning Board of Appeals shall have granted a variance or such other zoning relief as may be necessary to cure the nonconformity created by the exercise of this Option and shall have followed the necessary procedures to grant and implement such variances or other zoning relief (which may, in some instances require taking a vote at a Town meeting).

8.3. Purchase and Sale Agreement. As soon as possible after the exercise of either Option, the Developer and the Town shall enter into a purchase and sale agreement substantially in the form of the attached Exhibit __ [Greater Boston Real Estate Board Standard Form Purchase and Sale Agreement], which agreement shall govern the consummation of the transaction and shall incorporate the terms and conditions of this Agreement, including without limitation the Closing Date and Purchase Price. The Town and Developer agree that time shall be of the essence of this Agreement. The purchase price of the Option A Property, or the Option B Property, as the case may be, shall be the fair market value of such property as of the date of the exercise of the option pertaining to such property. In the event that the Town and

the Developer cannot agree in writing on such purchase price within ten days of the exercise of either Option then the purchase price of either the Option A Property or the Option B Property, as the case may be, shall be determined by appraisal of the fair market value of such property as of the date of the exercise of the option as follows. Within twenty days of the Town's exercise of either Option A or Option B, or both, the Town and the Seller shall each designate an impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts, to determine the fair market value of the Option A Property or the Option B Property. The expense of each appraiser shall be the responsibility of the party designating the appraiser. The unanimous written decision of the two appraisers so chosen shall be conclusive and binding upon the Developer and the Town. If the two appraisers shall fail to reach a unanimous written determination as to the purchase price within thirty days, the two appraisers shall designate a third impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts. The expense of the third appraiser so selected shall be divided equally between the Town and the Developer. The written decision of a majority of the three appraisers so selected shall be rendered within thirty days and shall be conclusive and binding on the Town and the Developer as to the purchase price.

8.4. Termination of Option A. Option A may be terminated in advance of its scheduled expiration date solely pursuant to Section 2.2 hereof and in no other manner.

8.5. Termination of Option B. Following the completion of construction each and every phase of the Project, the determination of whether the Developer has complied with this Agreement, the Development Agreement, the Order of Conditions and any other permits, special permits, orders of conditions, or other approvals or agreements between the Developer and the Town applicable to the development of the Development Property with respect to each such completed phase shall be made by the Town as follows. The Developer shall notify the Town Designee in writing of the completion of a phase of the Project, such notice to be accompanied by copies of a final unconditional certificate or certificates of occupancy for the completed phase and an architect's certificate of substantial completion of such phase. Within ten (10) days of the date such notice is received the Town Designee shall inspect such completed phase of the Project and determine whether such completed phase complies in all respects with this Agreement, including without limitation the Special Permit and Order of Conditions. If the Town Designee determines that such completed phase does so comply with the terms of this Agreement, the Town Designee shall execute an instrument in recordable form within ten (10) days of such inspection, acknowledging termination of the Town's rights

with respect to such completed phase of the Project. Following termination of the Town's rights under this Agreement with respect to all phases of the Project, the Town shall, at the request of Developer, execute an instrument in recordable form, acknowledging termination of all of its rights under Option B, and Option B shall be of no further force and effect between the parties.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Waiver: Except as otherwise expressly provided herein, failure on the part of either party of this Agreement to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is convenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent action by such party.

9.2. Invalidity of Particular Provisions: If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9.3. Provisions Binding: This Agreement may be cancelled, modified or amended only by a written instrument executed by both parties hereto.

9.4. Governing Law: This Agreement and the performance hereof shall be governed exclusively by the laws of Massachusetts, as the same may from time to time exist.

9.5. Recording: The parties hereto agree that a fully executed original of this Agreement shall be recorded with the Registry of Deeds and the Registry District. The cost of recording this Agreement shall be borne by the Developer.

9.6. Notices: Except as otherwise expressly provided herein, whenever notices, demands, requests or other communications shall or may be given under this Agreement

either to the Town or to the Developer, the same shall be deemed adequately given if in writing and hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested: If intended for the Town, addressed to it at the mailing address set forth on the first page of this Agreement, with copies to the Town Counsel; and, if intended for Developer, addressed to the Developer at the mailing address set forth on the first page of this Agreement, with copies to _____; or to such other address or addresses as may from time to time hereafter be designated by either party to the other by like notice; and such notices shall be effective upon receipt if hand delivered or upon deposit in the U.S. mail if subsequently received.

The Town and the Developer each agree to give prompt written notice to the other party of all material notices received by it from third parties relating to the Development Property.

9.7. Interpretation: As used herein, the singular shall include the plural and the plural shall include the singular as the context may require. The article and section headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement. References herein to successors and assigns of the Developer are not intended to constitute a consent to assignment or transfer by the Developer but refer only to those instances in which the Town shall have given consent thereto in accordance with the terms of this Agreement.

9.8. No Partnership: It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any association between the Town and the Developer, or cause the Town to be responsible in any way for the debts or obligations of the Developer.

9.9. Secondary Mortgage Market: So long as no substantive changes are required, the Town agrees to modify the restrictions contained herein and to be contained in the various documents required hereunder if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require such modifications as a condition precedent to its approval or agreement to acquire mortgages on the Units given or to be given in connection with the sale of such Units to persons or entities not a party to this Agreement.

9.10. Certificates of Completion and Release of Conditions: If and when the Developer shall have performed and complied with some or all of the agreements and conditions set forth in this Agreement, the Town shall upon request of the

Developer deliver to the Developer one or more certificates of completion and release of such conditions, in recordable form, signed by a majority of the Board of Selectmen of the Town of Acton and stating that the Developer has performed and complied with some or all of the agreements and conditions set forth in this Agreement to the satisfaction of the Town. Such a certificate shall be conclusive evidence of the Developer's performance of such agreements and compliance with such conditions as are stated in such certificate and of the release of the Developer and the Development Property from such conditions by the Town, provided, however, that such certificates shall not discharge or release the Developer, its successors or assigns or the Development Property from the terms, conditions, covenants and restrictions contained in the Condominium's master deed and in the Special Permit, or from building, zoning and other applicable laws, ordinances or regulations.

9.11. Authority of Developer: The Developer and any officer of the Developer executing this Agreement and any other documents required in connection with this Agreement or any conveyance to be made hereunder hereby warrant that they have the requisite power and authority to enter into and carry out this Agreement and all other documents executed and delivered in connection herewith or therewith. The execution and delivery of this Agreement and all other documents executed and delivered in connection with this Agreement have been duly authorized by the Developer's board of directors, to the extent required by law or the Developer's articles of organization or by-laws, and no other action of the Developer is required for the execution, delivery and performance of this Agreement, the Deed, and all other documents executed and delivered in connection herewith or therewith.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal this _____ day of _____, 1989.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

_____

_____

_____

_____

_____

High Street PCRC Trust

By_____
Roy C. Smith, as trustee

_____
Roy C. Smith, Individually

Roy C. Smith Associates, Inc.

By_____
Its:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named _____ and _____ acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen of the Town of Acton, before me

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, as trustee of High Street PCRC Trust, and acknowledged the foregoing instrument to be his free act and deed as trustee as aforesaid.

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, and acknowledged the foregoing instrument to be his free act and deed, as an individual, before me.

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named _____, the _____ of Roy C. Smith Associates, Inc., and acknowledged the foregoing to be his/her free act and deed and the free act and deed of said corporation, before me.

_____
Notary Public
My Commission Expires:

Conf.
rec'd 6/20/89 in hand @ BOS Meeting

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

June 20, 1989

BY TAXI

John Murray, Assistant Town Manager
Acton Town Hall
Acton, Massachusetts 01720

Re: Comprehensive Development Agreement -
Audubon Hill

Dear John:

Enclosed please find seven (7) copies of a draft of the captioned Agreement, revised to reflect our discussions yesterday with Roy Smith, Dick Cotter and Stan Gordon. In order to get a draft sent out in time to be discussed by the Board of Selectmen this evening, I have not had the opportunity to fully review this draft. To that end, I expect to make further changes to the Agreement, and a senior attorney is also reviewing this document. I believe, however, that this draft incorporates most of the changes which we all agreed upon. I am also sending copies of this draft to Dick Cotter and Stan Gordon.

**! Please inform the Board that this document is a working draft and that the Board has final approval over each of the terms, provisions and conditions contained in the final Agreement. I look forward to receiving any questions or comments that you, Don Johnson, or any member of the Board may have.

Very truly yours,

David Y. Bannard

DYB/bep
Enclosures
cc: Richard Cotter, Esq. (by taxi)
Stanley L. Gordon, Esq. (by taxi)
Thomas G. Schnorr, Esq.
(each with enclosure)

CONF.

EXHIBITS TO DEVELOPMENT AGREEMENT

EXHIBIT A - M:	TITLE:
Exhibit A:	Description of Development Property
Exhibit B:	Description of Averitt Land
Exhibit C:	Description of Option A Property (Conservation Area)
Exhibit D:	Conservation Deed Restriction
Exhibit E:	Guidelines
Exhibit F:	Description of Option B Property
Exhibit G:	Right of First Refusal
Exhibit H:	Lease of Senior Center
Exhibit I:	Easement to Averitt Land
Exhibit J:	Condominium Documents
Exhibit K:	Purchase & Sale Agreement for AHA Units
Exhibit L:	Purchase & Sale Agreement for Option A or B property
Exhibit M:	Conservation Area Survey

EXHIBIT E GUIDELINES

A. An Eligible Purchaser shall be defined as:

1. A Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser");

2. Who, based on the Prospective Purchaser's income and assets, does not qualify under the standards established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the fair market value of an Unrestricted Unit;

3. Who does qualify under the FHLMC or FNMA standards for a mortgage loan for 80% of the maximum Resale Price of a Restricted Unit.

B. The Acton Community Housing Corporation shall maintain a waiting list of Persons interested in purchasing Restricted Units as they become available. Although Persons listed on the wait list may not be presumed to be Eligible Purchasers, the ACHC may preliminarily screen such Persons to determine whether they may qualify as Eligible Purchasers.

C. The procedure for determining whether a Prospective Purchaser shall qualify as an Eligible Purchaser shall be as follows:

1. A Prospective Purchaser shall submit a mortgage loan application to a bank, savings and loan association, trust company, or other institutional lender (a "Bank") for purchase money financing to buy a Restricted Unit.

2. The Bank shall certify that (a) the Prospective Purchaser cannot qualify under FHLMC or FNMA standards, based on the Prospective Purchaser's income and assets, for purchased money financing for at least 80% of the Restricted Unit's Appraised Value but that (b) the Prospective Purchaser does qualify under such standards for such financing for a loan of at least 80% of the Maximum Resale Price of the aforesaid Unit.

3. The Seller shall then submit to the Town Designee the following documents:

(a) a determination of the Appraised Value and Maximum Resale Price of the Unit to be sold, determined as provided in the Agreement, the cost of such determination to be divided

equally between the Seller and the Prospective Purchaser;

(b) the Mortgage Lender's Certificate regarding the Prospective Purchaser's eligibility for a mortgage loan determined in accordance with paragraph C.2. above;

(c) a purchase and sale agreement executed by both the Prospective Purchaser and the Seller, containing a clause stating that such agreement may be rescinded should the Town disapprove of the proposed transaction; and

(d) an Affidavit of Compliance executed by both the Seller and the Prospected Purchaser pursuant to Section 3.4(e) of the Agreement.

4. The Town Designee shall review the documents submitted according to paragraph C.3. above, and within 10 days of such submission shall determine whether the Prospective Purchaser is an Eligible Purchaser pursuant the terms and conditions of the Agreement.

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 573-0100
TELECOPIER (617) 227-4420
TELEX 951104

June 20, 1989

BY TAXI

John Murray, Assistant Town Manager
Acton Town Hall
Acton, Massachusetts 01720

Re: Comprehensive Development Agreement -
Audubon Hill

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Please inform the Board that this document is a working draft and that the Board has final approval over each of the terms, provisions and conditions contained in the final Agreement. I look forward to receiving any questions or comments that you, Don Johnson, or any member of the Board may have.

Very truly yours,

David Y. Bannard

DYB/bep
Enclosures
cc: Richard Cotter, Esq. (by taxi)
Stanley L. Gordon, Esq. (by taxi)
Thomas G. Schnorr, Esq.
(each with enclosure)

Ann

June 20, 1989

TO: Town Clerk

FROM: Ann Simeone, Selectmen's Secretary

SUBJECT: MEETING

##

The Board of Selectmen will meet on Friday, June 23, 1989 at 7:30 A.M. in Room 204 to discuss Comprehensive Development Agreement.

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

June 21, 1989

TO: Don P. Johnson, Town Manager

FROM: Tom Tidman, Conservation Administrator T.T.

SUBJECT: Audubon Hill - Parking Area & Trail Design

1. The proposed parking area on conservation land as agreed upon by the Conservation Commission and Mr. Smith, and detailed on Sheet 31 "Plan and Profile of Brewster Lane in Audubon Hill", dated August 1, 1988; will be 60' X 75' in dimension. The construction will require an 8"-12" base of river run gravel and finished with a minimum of 6" of processed gravel. A 10' wide area will be cleared, loamed and seeded around the perimeter of the entire parking area for poison ivy control and snow removal.

2. The initial trail system to be constructed for the Commission by Mr. Smith and beginning at the proposed parking area will exit the parking area in the northeast corner and the southwest corner, as shown on Sheet 31. The trails will be 10' wide loamed and seeded. Mr. Smith will construct the first 200 yards of each trail, the remainder will be constructed by the Town of Acton. The trails will be 10' wide to allow Municipal Properties equipment in for routine maintenance and poison ivy control. Loaming and seeding is required on both trail locations for erosion control.

3. Parking area and trails have been flagged, but should be flagged again by a representative from the Conservation Commission prior to construction.

4. The proposed gate and key shown on Sheet 31, will be under the control of the Town of Acton Municipal Properties Department. The gate should be located at the stonewall separating the two properties.

5. Municipal Properties will require Mr. Smith to place a sign at the entrance to the parking area stating:

   "Parking area closed dusk to dawn. Police take notice".

cc: John Murray
Dean Charter

TT:ahm
96

COMPREHENSIVE DEVELOPMENT AGREEMENT

This Comprehensive Development Agreement (the "Agreement") is made as of the 23rd day of June, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts, acting by and through its Board of Selectmen, and Roy C. Smith, as Trustee of High Street PCRC Trust u/d/t dated March 5, 1985, recorded with the Middlesex South Registry of Deeds in Book 18611, Page 409 and the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust"). Roy C. Smith individually and as Trustee of the Trust, any corporation, partnership or other entity undertaking a development pursuant to the terms of this Agreement in which Roy C. Smith has an interest and any of their successors or assigns shall hereinafter be referred to collectively as the "Developer".

RECITALS

Reference is made to the following facts:

A. At a Special Town Meeting held in 1984, the Developer presented a written proposal (the "Development Proposal") with respect to the development of several parcels of land in the Town of Acton containing approximately 71 acres as more particularly described on Exhibit A attached hereto (the "Development Property"), seeking the approval of Town Meeting to designate the Development Property as a Planned Conservation Residential Community (PCRC) District pursuant to Section 9 of the Town Zoning By-Law. The Town Meeting made such a designation as to the Development Property.

B. By deed dated March 25, 1985, recorded with the Middlesex South Registry of Deeds at Book 16067, Page 278, Roy C. Smith, individually, acquired a portion of the Development Property consisting of an approximately 18 acre parcel of land as more particularly described in the deed thereto. Roy C. Smith, individually, conveyed this 18 acre parcel by deed dated October 8, 1987, recorded with said Deeds in Book 18611, Page 445, to Roy C. Smith, as Trustee of the Trust.

C. By deed dated October 8, 1987 from Norman R. Veenstra, recorded with said Deeds in Book 18611, Page 437, Roy C. Smith, as Trustee of the Trust acquired another portion of the Development Property consisting of three parcels of land containing approximately 39 acres more or less, as more particularly described in said deed.

D. By deed October 8, 1987 from Norman R. Veenstra, filed with said Registry District as Document No. 758060, and recorded with said Deeds in Book 1036, Page 179, Roy C. Smith, as Trustee of the Trust, acquired the balance of the Development Property consisting of a parcel of land containing approximately 14 acres more or less, as more particularly described in the deed thereto.

E. Roy C. Smith, as Trustee of the Trust, is the owner of record as of the date hereof of the Development Property.

F. The Developer agreed at public meetings held with the Town of August 25, 1987, and September 2, 1987, to develop the Development Property substantially in accordance with the terms and conditions of the Development Proposal as generally illustrated on a plan entitled "Overall Land Use Plan of Land in Acton Mass," dated October 16, 1984, and in accordance with the terms and conditions of a special permit to be issued by the Town acting through its Planning Board under the PCRC District, and in no other manner.

G. On October 9, 1987, the Developer and the Town entered into a Development Agreement (the "Prior Development Agreement"), a Release Agreement, a First Option Agreement and a Subordinated Option Agreement with respect to the Development Property, all of which are incorporated by reference herein. The Prior Development Agreement required the Developer and the Town enter into a Comprehensive Development Agreement upon the issuance of the special permit described in the preceding paragraph (F).

H. On March 4, 1989, the Town, acting through its Planning Board, approved, subject to certain terms and conditions, the Developer's application for a Planned Conservation Residential Community special permit filed with a plan entitled "Audubon Hill in Acton, Mass.," dated August 1, 1988 (the "Special Permit"). On March 15, 1989, the Town, acting through its Conservation Commission, issued to the Developer an Order of Conditions with respect to the Development Property.

I. The Developer and the Town now wish to coordinate the terms of all prior permits, conditions, orders and agreements by this Comprehensive Development Agreement to govern the relationship of the parties with respect to the Development Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I: GENERAL PROVISIONS

1.1 Definitions.

The following terms used in this Agreement shall have the meanings specified below:

Act: means Chapter 183A of the General Laws of Massachusetts, as it may be amended.

Affidavit of Compliance: means an affidavit executed as provided in Section 3.4.(e) hereof.

Affiliated Party: means as to any Person, (i) a member of the Immediate Family of such Person, (ii) the estate of any Person referred to in the preceding clause, (iii) the trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) and (ii), (iv) an entity of which a majority of the voting and/or benefical interest is owned by any one or more of the Persons referred to in the preceding clauses (i) through (iii), or (v) a Person who is an officer, director, trustee, employee, stockholder/beneficiary (15% or more) or partner of any entity which is a Person referred to in the preceding clauses (i) through (iv).

Agreement: means this Comprehensive Development Agreement, incorporating the Order of Conditions, the Special Permit and the Plan, as this Comprehensive Development Agreement may be amended from time to time.

Appraised Value: means, as to a Restricted Unit, the fair market value of the Restricted Unit as determined by a real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price reasonably established by the Developer. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

Approval Documents: means all documents required pursuant to the terms and conditions of this Agreement in

connection with the sale, conveyance or other transfer of a Restricted Unit, including an executed counterpart original of the purchase and sale agreement for the sale of any such Unit, Mortgage Lender's Certificate, a determination of the Maximum Resale Price of the Unit to be conveyed, and all Affidavits of Compliance which may be required.

Averitt Land: means that land more fully described in Exhibit B attached hereto and incorporated herein by reference.

Completion of Construction: means, as to any Phase, Subphase or Unit of the Project, that each of the following has occurred: (i) an architect duly licensed and qualified under the laws of the Commonwealth of Massachusetts has certified that such Phase, Subphase or Unit has been substantially completed in accordance with the plans and specifications therefor; (ii) the Town Designee has inspected such Phase, Subphase or Unit and determined that such Phase, Subphase or Unit is in compliance with the terms of this Agreement, the Special Permit and the Order of Conditions, as each may apply; and (iii) an authorized Town official has issued a certificate of occupancy, if one is required, for such Phase, Subphase or Unit.

Condominium: means the Audubon Hill North and the Audubon Hill South Condominium (which shall include the Town of Acton Senior Center), or any Subphase thereof, as contemplated in the Plan, to be established according to the provisions of the Act and built in accordance with this Agreement, the Special Permit and the Order of Conditions.

Condominium Association: means the unit owners' association established pursuant to the Condominium Documents for the Audubon Hill North Condominium or the Audubon Hill South Condominium or both in order to govern the affairs of the Condominium.

Condominium Documents: means those documents required under the provisions of the Act to submit the Development Property to the condominium form of ownership to establish the Condominium, in compliance and in accordance with the provisions of the Act, forms of which are attached hereto as Exhibit F and incorporated herein by reference.

Conservation Administrator: means the Person designated from time to time and employed by the Town to act as the Conservation Administrator of the Town, or any Person acting in a successor position so designated by the Town.

Conservation Restriction: means the conservation restriction substantially in the form of Exhibit D that is to

be placed on the Development Property by the Developer pursuant to the terms of this Agreement.

Construction Lender: means a bank, insurance company, savings and loan association, trust company or other institutional lender, or a noninstitutional lender which is approved in writing in advance by the Town, who holds a Construction Mortgage.

Construction Mortgage: means a mortgage on the Development Property given by the Developer to secure the payment of one or more loans which may be used only for the financing or refinancing of the construction of the Project in accordance with the terms of this Agreement, the Special Permit, the Order of Conditions and one or more construction loan agreements consistent with the aforesaid documents.

Development Property: means the real property upon which the Developer intends to construct the Project, as more fully described in the Site Plan attached hereto as Exhibit A and incorporated herein by reference.

Developer: means Roy C. Smith as Trustee of the High Street PCRC Trust, Roy C. Smith individually, and any Affiliated Party of Roy C. Smith undertaking development pursuant to this Agreement and any successor or assign.

Eligible Purchaser: means a Senior Citizen who satisfies the criteria set forth in the Guidelines in effect at the time the Senior Citizen is ready and willing to purchase a Unit. In addition, the Town and the Acton Housing Authority shall also be deemed Eligible Purchasers.

First Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987 concerning the Option A Property, recorded with the Registry of Deeds at Book 18611, Page 459, and incorporated herein by reference.

Guidelines: means the program documents attached hereto as Exhibit E and incorporated herein by reference, as they may be amended from time to time by the Town, which establish the criteria by which an Eligible Purchaser shall be determined.

Immediate Family: means with respect to any Person, his or her spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

Improvements: means those buildings, structures and other improvements, including without limitation landscaping and paving, which shall be constructed on the Development

Property in accordance with the Special Permit, the Plan, the Order of Conditions and this Agreement.

Maximum Resale Price: means, as to any Restricted Unit, the price, as of a given date, equal to seventy five percent (75%) of the Appraised Value of such Unit, plus fifty percent (50%) of the cost of any appraisal required hereunder.

Mortgage Lender's Certificate: means that certificate issued by a bank, savings and loan association, trust company, or other institutional lender regarding a prospective purchaser's eligibility for a mortgage loan under FNMA or FHLMC standards in accordance with Paragraph C.2. of the Guidelines, as they may be amended from time to time.

North Phase: means the Phase of the Project which includes the construction of (i) the "Northern Phase" (Units 101-128, 130 and 132) and (ii) the landscaping and other facilities appurtenant to such Units as contemplated in the Plan.

Option A: means the option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option A Property under the terms of the First Option Agreement.

Option B: means the subordinated option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option B Property under the terms of the Subordinated Option Agreement.

Option A Property: means that portion of the Development Property shown as "Option A Property" on the Site Plan excluding, however, any and all Units in the Project.

Option B Property: means that portion of the Development Property shown as "Option B Property" on the Site Plan.

Order of Conditions: means the Order of Conditions, DEQE File number 85-265, issued to Roy Smith, as Trustee of the Trust, by the Acton Conservation Commission pursuant to G.L. c.131, §40 on March 15, 1989, and incorporated herein by reference, and recorded with the Registry of Deeds at Book 19722, Page 505 and with the Registry District as Document No. 795846, which imposes certain terms and conditions on the development of the Project.

Person: means any individual, or general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, successors and assigns of such Person where the context so admits.

Phase: means a portion of the Project, as described in the Plan.

Plan: means a plan entitled "Audubon Hill, Acton, Mass.", dated August 1st, 1988, for land owned by High Street PCRC Trust, drawn by Acton Survey & Engineering, Inc., Gauchat Architects, Inc., and Carrol R. Johnson & Associates, Inc., consisting of 46 sheets and referenced as Exhibit 1 to the Special Permit.

Project: means the planning, construction, landscaping and all other related or similar development of the Development Property in accordance with the Plan, this Agreement, the Special Permit and the Order of Conditions, including, without limitation, the planning, construction and landscaping of the Condominium, the Improvements contemplated in Section 2.2 hereof and the Senior Center.

Registry of Deeds: means the Middlesex South Registry of Deeds.

Registry District: means the Middlesex South Registry District of the Land Court.

Restricted Unit: means a Unit subject to certain resale price restrictions, which restrictions are set forth in Article III hereof and in the Master Deed of the Condominium, and are incorporated herein by reference, for the benefit of the Town, its successors and assigns.

Security: means a letter of credit or similar secure financial commitment, the terms and conditions of which are acceptable to the Town, issued by a financial institution acceptable to the Town, provided by the Developer at the Developer's sole expense for the benefit of the Town.

Senior Center: means that portion of the Condominium's common areas and facilities which shall be constructed by the Developer as contemplated in the Plan, the Special Permit and the Order of Conditions and leased to the Town under the terms and conditions of a lease, attached as Exhibit H hereof and incorporated herein by reference, for use by the Town as a senior citizen's center.

Senior Citizen: means any natural Person fifty-five years of age or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a Unit to such Person.

Site Plan: means a plan entitled "The Site Plan of Audubon Hill in Acton, Mass." dated June 30, 1989 for land owned by Roy C. Smith, as Trustee of the Trust,

drawn by Acton Survey & Engineering, Inc., attached hereto as Exhibit A and incorporated herein by reference.

South Phase: means that portion of the Project which includes construction of (i) the improvements to the Conservation Area, (ii) the Senior Center, (iii) the "Southern Phase" (units 1-32 and 34,36,38,40,42,44,46 and 48) and (iv) the landscaping, utilities, access roads and other facilities appurtenant to the Senior Center and the aforesaid Units as contemplated in the Plan.

Special Permit: means the Planned Conservation Residential Community Special Permit granted on March 4, 1989, by the Acton Planning Board to Roy C. Smith, as Trustee of the Trust subject to and with the benefit of certain conditions, modifications, waivers and limitations, received and filed by the Acton Town Clerk on March 6, 1989 and recorded with the Registry of Deeds at Book 19722, Page 511 and the Registry District as Document No. 795847.

Subordinated Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987, concerning the Option B Property, recorded with the Registry of Deeds at Book 18611, Page 480 and with the Registry District as Document No. 758067, incorporated herein by reference.

Subphase: means any portion of any Phase, as described in the Plan.

Town: means the Town of Acton, acting through its Board of Selectmen.

Town Counsel: means Norman P. Cohen, Esquire, Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108, or such successor counsel, duly admitted to the practice of law in the Commonwealth of Massachusetts, as is designated by the Town.

Town Designee: means any person or entity designated by the Town in accordance with this Agreement to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or any designee of the Developer. The Town hereby designates the Town Manager, or his or her assignee as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals

and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

Unit: means a condominium unit so designated in the Master Deed of the Condominium.

Unrestricted Unit: means a Unit not subject to the restrictions contained in this Agreement with regard to resale price and purchase eligibility imposed on Restricted Units.

1.2 General Provisions.

(a) this Agreement shall supercede the Prior Development Agreement recorded with the Registry of Deeds at Book 18611, Page 447 and with the Registry District as Document No. 758064. Upon execution of this Agreement and its recording with the Registry of Deeds and the Registry District, the Town and Developer shall execute a document in recordable form releasing the Prior Development Agreement and a Release Agreement between Roy C. Smith, as Trustee of the Trust and the Town, dated October 9, 1987 and recorded with the Registry of Deeds in Book 11684, Page 367 (the "Prior Release Agreement"), which Prior Development Agreement and Prior Release Agreement shall thereupon be void and of no further effect. Promptly following execution of the aforesaid release, the Developer shall record, at its own expense, said release with the Registry of Deeds and the Registry District.

(b) Upon the Completion of Construction of the entire Project in accordance with (i) the terms and conditions of this Agreement, the Special Permit, the Plan, the Order of Conditions and any subsequent agreements or permits between the Town and the Developer concerning the Project, and (ii) all applicable laws, ordinances, bylaws and codes, the Town agrees to execute a release of this Agreement in recordable form, which the Developer may record at its sole expense with the Registry of Deeds and the Registry District. Notwithstanding any provision of the foregoing to the contrary, upon the release of this Agreement, the following independant documents and agreements shall remain in full force and effect according to their terms and the aforesaid release shall not alter or affect any of the following documents and agreements: the Conservation Deed Restriction (Exhibit D), the Lease of the Senior Center (Exhibit H), the Easement to Averitt Land (Exhibit I), the Condominium Documents (Exhibit J) and the Purchase and Sale Agreement (Exhibit K).

ARTICLE II: DEVELOPMENT

2.1. The Development.

The Developer covenants, promises and agrees, for itself, its successors and assigns, to develop the Project as follows:

(a) to undertake and complete the development of the Project in accordance with this Agreement, the Plan and any plans and specifications referred to in the Special Permit;

(b) to comply in all respects with the terms and conditions of the Special Permit, the Order of Conditions and all other agreements between the Town and the Developer; and

(c) to comply with all building, zoning and other applicable laws, ordinances and regulations.

The Project shall be completed to the satisfaction of the Town on or before the date which is three (3) years from the date of this Agreement, provided, however that such date may be extended for up to one (1) year by the Town Planning Board as provided in the Special Permit and as further provided in this Agreement.

2.2. Conservation Land.

(a) The Developer acknowledges and agrees to subject that portion of the Development Property shown as "Conservation Open Space" on the Plan and Site Plan to the Conservation Restriction in the form attached hereto as Exhibit D, which Conservation Restriction shall be recorded against the Development Property prior to the commencement of construction of any Improvements or any portion of the Development Property. The Developer shall record the Conservation Restriction within thirty (30) days after the date of this Agreement.

(b) The Developer shall grant to the Town an easement appurtenant to the Averitt Land, a perpetual easement for ingress and egress over, under and across the location shown generally on the Site Plan as "40 Ft. Wide Access Easement" and in the form of Exhibit C attached hereto (the "Access Easement"). Use of the Access Easement is to be limited strictly to access from High Street to the Averitt land for use of the Averitt Land for passive recreational uses and all maintenance on the Averitt Land for passive recreational uses; provided, however, that no such access shall be granted prior to conveyance of the first Unit.

Such easement shall be granted prior to the commencement of construction of any of Units.

(c) The Developer will construct, in accordance with procedures required by the Town Engineering Administrator, at the Developer's sole expense, (i) a gravel road within the area of the Access Easement for the passage of vehicles from the area shown as "40 Ft. Wide Access Easement" on the Plan, and (ii) a five car gravel parking lot on the aforesaid Averitt Land at a location to be designated by the Town (collectively, the "Gravel Drives").

(d) The Developer will, at its sole expense design and lay out a system of trails (the "Trails") over the existing Averitt Land and clear a burnt area of that land, pursuant to standards, conditions and procedures required by the Conservation Administrator.

(e) The Developer shall present to the Town no later than sixty (60) days from the date hereof, a survey prepared by a registered land surveyor and approved by the Conservation Administrator, indicating the location of the Access Easement, Gravel Drives, and the Trails. The Developer shall obtain the Conservation Administrator's approval of the location of each of the Access Easement, the Gravel Drives, and the Trails.

(f) The Developer shall obtain Security running to the Town for the full cost, as determined by the Conservation Administrator, of the Improvements contemplated in this Section 2.2.

(g) The Developer shall complete the Improvements described in this Section 2.2 to the satisfaction of the Conservation Administrator on or before the completion of the South Phase or December 31, 1990, whichever occurs sooner provided, however, that if completion of such Improvements is delayed due to action or inaction attributable to the Town, such date shall be extended by a period equal to the delay attributable to the Town.

(h) Within ten (10) days after (i) the Developer has given the Town Designee notice that the Developer has recorded the Conservation Restriction and supplied the Town Designee with a certified copy of the Conservation Restriction containing all appropriate recording information and (ii) the Security is issued, the Town shall execute, in a

form suitable for recording, a release of the First Option Agreement and deliver such release to the Developer. The Developer at its sole expense shall promptly record such release with the Registry of Deeds and the Registry District and provide the Town with a certified copy of such release as recorded.

(i) Upon the completion of the Improvements contemplated under this Section 2.2., the Developer shall give the Conservation Administrator written notice of such completion and within ten (10) days of such notice, the Conservation Administrator shall inspect the Improvements and the Conservation Administrator shall determine whether these Improvements comply with the terms and conditions set out in Section 2.2 of this Agreement. If the Conservation Administrator determines that the Improvements are acceptable to the Town, the Town shall execute a release of the Security provided pursuant to Section 2.2(f), above and deliver such release to the Developer.

(j) If the Conservation Administrator disapproves of any of the Improvements described in this Section 2.2, he or she shall so notify the Developer, in writing, specifying the reasons therefor. In the event of such disapproval, the Developer shall promptly correct any defects noted by the Conservation Administrator and the Conservation Administrator shall then reinspect said Improvements as provided in Section 2.2(i) above. Should the Developer fail to correct any such defect within ninety (90) days following the receipt of notice, the Town may, at its option, proceed to cause such defect to be corrected and draw upon the Security provided pursuant to Section 2.2(f) above for payment therefor.

ARTICLE III: RESTRICTION ON CONDOMINIUM DEVELOPMENT

3.1. Establishment of Condominium.

(a) Concurrent with the execution of this Agreement, the Developer shall deliver to the Town Designee, with a copy to the Town Counsel, the Condominium Documents which shall be attached hereto as Exhibit F and incorporated herein by reference. The forms of the Condominium Documents, including without limitation, the declaration of trust of the Condominium trust, the by-laws of the Condominium trust and the master deed and Unit deeds shall be

subject to the approval of the Town; provided, however, that following execution of this Agreement and approval by the Town of the Condominium Documents, Town approval shall be required ony for any amendment or other revision to the Condominium Documents which may be inconsistant with the provisions of either Section 3.3 or Section 3.4 of this Agreement. The Condominium Documents shall be consistent with the provisions and intent of this Agreement. The Condominium shall be comprised of seventy (70) residential Units, a community recreation building and the Senior Center.

The Condominium Documents shall provide that the Developer shall not exercise its voting rights under the Condominium Documents to amend any of the provisions of the Condominium Documents to be inconsistent with this Agreement without the prior written consent of the Town.

The approval by the Town of each amendment or revision of the Condominium Documents shall be conclusively established by an endorsement thereon signed and acknowledged by the Town Designee or any member of the Board of Selectmen of the Town stating that such document has been approved by the Town, except that only the first Unit deed and not subsequent Unit deeds need contain such endorsement.

(b) Following execution of this Agreement, the Developer at its sole expense shall record the declaration of the Condominium trust, the by-laws of the Condominium and the Condominium master deed, all as approved by the Town, and take all other actions necessary to lawfully and validly submit the Development Property to the provisions of Chapter 183A of the Massachusetts General Laws, on or before the date thirty (30) days after Completion of Construction and in no event later than July 31, 1992 or as extended pursuant to this Agreement and the Special Permit. The Developer shall promptly deliver to the Town copies of all of the Condominium Documents as recorded, indicating the place of recording of same in the Registry of Deeds and the Registry District.

3.2. Improvements on the Development Property.

(a) Except as otherwise expressly provided in this Agreement, no building, structure or other improvement shall be constructed or maintained on the Development Property, nor any alteration made

to the exterior of any building located on the Development Property except as contemplated or permitted by the terms of the Special Permit, the Plan, the Order of Conditions and this Agreement.

(b) The Developer shall commence construction of the Project by constructing the South Phase. Excepting construction of access roads, utilities, preliminary site preparation work and the community center, the Developer shall not commence construction of any subsequent Phase of the Project until the Completion of Construction of twenty seven (27) Units in the South Phase.

3.3. Sale of Condominium Units by Developer.

(a) Every Unit deed conveying an interest in a Unit shall contain a statement that such Unit is subject to the terms and conditions of Article III hereof, and shall contain a reference to the place of recording of this Agreement with the Registry of Deeds and the Registry District.

(b) Every sale, assignment, resale or other conveyance of an interest in every Unit whether by the Developer or its successors, heirs or assigns, for a period of forty (40) years from the date of this Agreement, shall be to (i) a Senior Citizen, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family provided that the Unit so purchased shall be the residence of such Senior Citizen, and his or her spouse, if any. Each Senior Citizen or Senior Citizen and spouse acquiring an interest in a Unit shall utilize such Unit as their residence. Each Unit deed shall contain a statement incorporating the provisions of this Section 3.3(b).

(c) At least thirty-five percent (35%) of the Units constructed on the Development Property, shall be Restricted Units, sold by the Developer subject to the resale restrictions described in this Agreement and the Guidelines attached hereto. These restrictions shall be incorporated into the Condominium's master deed and shall inure to the benefit of and be enforceable by the Town, its successors and assigns.

(d) Without limitation the Developer will at all times use its best efforts to market and sell all Units.

(e) Every unit deed conveying a Restricted Unit or an interest therein shall recite the resale

restrictions described in Section 3.4, and contain a statement that such Unit is a Restricted Unit subject to said provisions and of the Special Permit, and shall include such provisions within such deed or a reference to the place of recording of such documents with the Registry of Deeds and the Registry District.

(f) The Developer agrees to convey five (5) Units to the Acton Housing Authority (the "AHA") at the election of the AHA for the price of sixty five thousand dollars ($65,000) for each Unit on the terms and conditions set forth on the purchase and sale agreement attached hereto as Exhibit K, subject to approval by the Executive Office of Community Development. The Developer further agrees that three (3) of the Units referred to in the previous sentence shall be constructed as part of the South Phase of the Project and two (2) of such Units shall be constructed as part of any subsequent Phase of the Project. The Units to be so conveyed have been designated in five (5) Right of First Refusal agreements as executed by the Developer as of March 8, 1989 and attached hereto as Exhibit G. Upon execution of this Agreement, the terms and conditions of this Agreement and the attached Exhibit K shall govern the sale of such Units and the aforesaid five Right of First Refusal Agreements shall thereupon be void and of no further effect. Sixty (60) days prior to the estimated Completion of Construction of each Unit to be conveyed to the AHA, the Developer shall give the Town Designee and the AHA notice of the estimated date of the Completion of Construction of such Unit. The date of conveyance of the deed to each such Unit shall be thirty (30) days following the Completion of Construction of such Unit unless an earlier date is agreed to in writing by the parties. The Developer and the Town agree that time shall be of the essence of this agreement to convey the aforesaid Units. The aforesaid Units shall be Restricted Units for the purposes of this Agreement.

(g) The Developer may only sell, convey or otherwise transfer a Unit for which the Developer has received a Certificate of Occupancy. Notwithstanding the foregoing sentence, the Developer may execute a Purchase and Sale Agreement for a Unit prior to receiving a Certificate of Occupancy. Until such time as Completion of Construction of the Senior Center has occurred, the Town shall grant Certificates of Occupancy only for

Units constructed in the South Phase in conformity with this Agreement. The Town shall grant no further Certificates of Occupancy with respect to Units in the Project until the Completion of Construction of twenty seven (27) Units in the South Phase and the Senior Center has occurred.

3.4. Conditions for Resale.

(a) Age. For a period of forty (40) years from the date of this Agreement, no Unit or any interest therein shall be sold, assigned, conveyed or otherwise transferred, and no attempted sale, assignment, conveyance or other transfer shall be valid, unless the Person or Persons acquiring such Unit or interest shall be (i) one or two Senior Citizens, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family and such Senior Citizen or Senior Citizen and his or her spouse shall agree to utilize such Unit as their principal residence.

(b) Price. For a period of forty (40) years from the date of this Agreement no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit for and in connection with the transfer of such Restricted Unit, is equal to or less than the Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such Unit. In the event that (i) the price restrictions contained herein are not extended as provided in the Condominium Documents or are withdrawn prior to the expiration of such forty (40) year period, or (ii) the Restricted Unit is sold pursuant to the terms and conditions of Section 3.4(h) below, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town, or such successor entity as is designated by the Town Board of Selectmen, to be held and invested in a trust as directed by the Town Board of Selectmen for the benefit of the Town's Senior Citizens. Upon payment of such excess sum to said trust, the Town Designee shall execute a certificate, in recordable form, acknowledging receipt of such monies. The interest on and corpus of said trust shall be applied only as directed by the Town Board of Selectmen.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted Unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Rental Prohibition. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Agreement. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by the owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of: the owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the Unit, amortized over their reasonable useful life; and any utility fees incurred by the owner in connection with the Unit.

Prior to the rental of any Restricted Unit, the owner of said Unit shall provide the Town Designee with evidence, reasonably satisfactory to the Town Designee, sufficient to substantiate the preceding requirements of this Section 3.4(d).

(e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit by the Developer, its successors or assigns, or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Person or Persons contemplating the purchase of the Unit (the "Prospective Purchaser"), identifying the Unit in question, the Seller and the Prospective Purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certification thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of a date not later than the date set for closing of the proposed sale.

(f) Certificate from Town: At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at its mailing address set forth on the first page of this Agreement or such other address for the Town as shall appear of record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or re-sale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(i) a certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

(a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Agreement; or

(b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or re-sale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any Restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in subsection (i) above referring to such Unit and such certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 3.4(f)(i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Unit pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other

revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

(h) Lack of Eligible Purchaser.

(i) In the event that the owner of a Restricted Unit places a Restricted Unit for resale on the open market by so notifying the Town Designee and, at such owner's option, by listing such Unit with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original notice to the Town Designee, the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance may the Restricted Unit be sold without compliance with the foregoing resale price restrictions, which restrictions shall

then be forever released as to the particular restricted Unit.

(ii) In the event a Restricted Unit is sold as described in Section 3.4(h)(i), the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens as provided in Section 3.4(b) hereof.

(iii) Prior to the sale of any Restricted Unit pursuant to this Section 3.4(h), the Seller shall deliver to the Town Designee an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of such Unit identifying the Unit, the Seller and the Prospective Purchaser and the names and ages of all persons in the Prospective Purchaser's household and stating and affirming:

(a) The date that the Seller notified the Town Designee that the Unit was listed for sale and the date such Unit was listed with a real estate brokerage company, if any; the name and address of such real estate company; and the specific time periods of such listing, including reference to the multiple listing service wherein the Unit was so listed for sale.

(b) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(c) That such Unit was offered to each Person listed on the waiting list kept by the Town Designee pursuant to Exhibit E hereto and that none of such Persons listed was either (i) an Eligible Purchasesr or (ii) ready, willing and

able to purchase the Unit on customary terms for the Maximum Resale Price.

(iv) Within ten (10) days of delivery of the documents required pursuant to Section 3.4(h)(iii) hereof, the Town Designee shall execute a certificate similar in form and content to the certificate described in Section 3.4(f) herein, except that such certificate shall also state:

(a) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the resale price restrictions contained in this Agreement;

(b) That the Town Designee on behalf of the Town waives the right to enfore the resale price restrictions set forth herein or any of them in connection with the proposed sale or transfer; and

(c) That the Town acknowledges receipt of funds required to be paid pursuant to section 3.4(h)(ii) herein and that the Unit in question is no longer a Restricted Unit and is released as a Restricted Unit and from these resale price restrictions in perpetuity.

3.5 Use.

(a) The use of each Unit shall be restricted to residential housing only. Furthermore, no Unit shall be the residence of more than two (2) Persons who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Condominium Association, a member of the Unit owner's Immediate Family (other than spouse) may reside in such Unit upon a showing of good cause. Overnight guests may be allowed as provided in the Condominium Documents.

(b) No Unit shall be rented, licensed, or sublet except to Senior Citizens or a Senior Citizen and spouse and, furthermore, a Restricted Unit shall be rented, licensed or sublet only as provided in Section 3.4.(d), above.

ARTICLE IV. SECURITY FOR PERFORMANCE OF DEVELOPER'S OBLIGATIONS

4.1. As security for the performance of Developer's obligations hereunder, under this Agreement, the Special Permit, the Order of Conditions, and any other covenant and agreement with the Town, the Developer has done or shall do the following:

(a) Post Security with the Planning Board. The purpose of such Security is to ensure that the Developer will construct all Improvements pursuant to Section 2.2 in accordance with the terms and conditions of this Agreement, the Special Permit and the Order of Conditions. The Planning Board shall determine the amount of the Security, the termination date of the Security, and shall administer the Security.

(b) Pursuant to the First Option Agreement, the Developer has granted the Town Option A which, for a period of forty years, grants the Town the exclusive option to purchase the Option A Property and the improvements thereon, if any, and any rights appurtenant thereto for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 hereof.

(c) Pursuant to the Subordinated Option Agreement, the Developer has granted the Town the exclusive option for a period of forty years to purchase all or any portion of the Option B Property and the improvements thereon, if any, and any rights appurtenant thereto, for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 of this Agreement.

(d) The First Option Agreement and the Subordinated Option Agreement shall be merged into and made a part of this Agreement and the Town and Developer agree to execute and record with the Registry of Deeds and the Registry District, at the Developer's sole expense, an instrument releasing such Option Agreements concurrent with the execution and recording of this Agreement, provided that neither the First Option nor the Subordinated Option shall be released, in whole or in part, except in accordance with the provisions of this Agreement.

4.2. Encumbrances/Subordination. Developer agrees that prior to the Completion of Construction of the entire Project, Developer will not voluntarily convey, transfer, or otherwise dispose of the Development Property; and Developer

agrees that it will not mortgage, pledge or refinance the Development Property in such a manner as would prevent, or interfere with performance under this Agreement by Developer. Notwithstanding the foregoing, the Town hereby acknowledges that Option B shall be subject and subordinate to a certain Mortgage Agreement dated October 9, 1987, between Developer and Shawmut Bank, N.A. recorded with the Registry of Deeds at Book 18611, Page 473 and the Registry District as Document No. 758066, and to the interest of any other Construction Mortgage.

ARTICLE V. SENIOR CENTER

5.1 Construction of Senior Center. The Developer shall construct or cause to be constructed as a common area and facility in the Condominium a Senior Center on the Development Property as contemplated in and in conformity with the Plan, the Special Permit, this Agreement and the Order of Conditions. The Senior Center shall be constructed as part of and concurrently with the South Phase and in no event shall Completion of Construction of the Senior Center be later than one hundred eighty (180) days after the first building permit is issued for the North Phase.

5.2 Lease to Town. Upon the Completion of Construction of the Senior Center, the Developer shall execute, deliver to the Town and record with the Registry of Deeds and/or the Registry District, as appropriate, at the Developer's sole expense, a lease between the Town and the Condominium Association for the Senior Center upon the terms and conditions contained in the Lease attached as Exhibit H, incorporated herein by reference (the "Lease"). Such Lease and the Condominium Documents shall provide that in no event shall the Town be required to pay any form of condominium or common fees, special assessments or the like.

5.3 Maintenance of Senior Center. The Developer, or, following its creation, the Condominium Association, shall be responsible for the maintenance and repair of the exterior of the Senior Center (including, without limitation, the roof and load bearing walls) and the grounds surrounding it at its sole expense. The Condominium Documents shall provide for a sufficient budget and reserves for such maintenance. The Town shall be responsible for maintaining the interior of the Senior Center at its own expense. The Town shall establish reasonable standards for all such maintenance. In the event that the Town alters or expands the Senior Center, for example, by expanding the kitchen or the Senior Center's sewage demands, such action shall be contingent upon Town approval and authorization of each such action and shall be at no cost to the Condominium Association.

5.4 Insurance.

(a) Until the Completion of Construction of the Senior Center and execution of the Lease, the Developer or the Condominium Association shall keep the Senior Center insured in accordance with Article VII of this Agreement.

(b) Upon Completion of Construction and execution of the Lease, the Town shall keep the Senior Center insured as provided in the Lease.

ARTICLE VI. TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

6.1. No Transfer. The Developer agrees that it will not, prior to conveyance of all Units in the Condominium to unaffiliated third parties, including the conveyance of the Senior Center to the Town or its nominee, make or suffer to be made any assignment or any other transfer of any of its interest in the Property or any portion thereof or in this Agreement, other than sales of Units in accordance with the provision of this Agreement, except with the prior written approval of the Town. In order to receive such approval by the Town, a transferee or transferees shall have expressly assumed, for themselves and their successors and assigns, by written instrument satisfactory to the Town, all obligations of the Developer provided in this Agreement, and all legal documents employed in affecting a transfer pursuant to this Section 6.1 shall have been submitted to and approved by the Town; provided, however, that Developer may grant one or more Construction Mortgages on the Property to secure the payment of any loan or loans obtained by the Developer from a Construction Lender and provided further, that Developer may grant a second mortgage to the Bank of New England which is subordinate to this Agreement, the First Option and the Subordinated Option. The Developer shall deliver a copy of any Construction Mortgage, construction loan agreement and the aforesaid second mortgage to the Bank of New England to the Town Designee upon the execution of each such document.

The fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have expressly assumed all of the obligations of the Developer hereunder and all conditions and restrictions contained herein, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Town of or with respect to any rights, conditions or restrictions with respect to the Development Property or the construction of the Improvements thereon; it being the intent of this section, together with other provisions of this

Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership of the Development Property shall operate, legally or practically, to deprive or limit the Town of or with respect to any such rights, conditions or restrictions provided in or resulting from this Agreement with respect to the Development Property and the construction of the Improvements thereon that the Town would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Town to the contrary, no such transfer or approval thereof by the Town shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

6.2. Construction Mortgage; Rights and Obligations of Construction Lender:

(a) No Construction Lender shall be deemed to have assumed or to be bound to perform the obligations of the Developer hereunder by reason of having acquired an interest in the Development Property for security purposes except as provided herein. A Construction Lender shall have the right to perform any action in order to cure or make good any default in the performance of the Developer's obligations under this Agreement, and the Town shall accept such performance by the Construction Lender to the same extent as if the same were performed by the Developer. If the Construction Lender shall acquire or succeed to the Developer's interests in the Development Property by reason of foreclosure or similar remedial action or upon conveyance of the Development Property in lieu of foreclosure, the Construction Lender shall be subject to only the obligations of the Developer accruing hereunder during the period in which the Construction Lender holds possession of the Property or owns the Developer's interest therein. The Town agrees that the Construction Lender may sell, assign or otherwise dispose of the Developer's interest to which it has so succeeded or which it has so acquired. Upon any such sale, assignment or disposition, such Construction Lender shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement after the effective date of such sale.

(b) If a Construction Lender shall by written notice to the Town notify the Town of the execution, delivery and recording of a Construction Mortgage, and of the name and address of the Construction Lender for notice purposes, and of the recording reference of its Construction Mortgage, and with such notice shall furnish to the Town a true copy of its Construction Mortgage, the Town agrees that from the date of such notice until such Construction Mortgage shall be discharged or released of record, the following provisions shall apply:

(i) There shall be no cancellation, surrender, termination or modification of this Agreement by joint action of the Town and the Developer, without in each case first securing the prior written consent of each such Construction Lender;

(ii) The Town shall, upon giving to the Developer any notice of default under this Agreement, simultaneously give a copy of such notice to each such Construction Lender, and no notice of default given to the Developer shall be effective until a copy thereof has been given to each such Construction Lender. Whenever pursuant to this Agreement notice is to be given to a Construction Lender, a notice addressed to such Construction Lender at its address specified in accordance with the foregoing provisions of this section and otherwise complying with the terms of the notice provisions of this Agreement shall conclusively be treated as having been "given" within the meaning of the respective provisions hereof calling for notice to a Construction Lender;

(iii) Each Construction Lender shall have the same period after such notice of default has been given to such Construction Lender, for remedying any default of the Developer in performance of any of its obligations hereunder or causing the same to be remedied, as is given the Developer after the giving of such notice to the Developer, plus an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is

continuously prosecuted with diligence, and the Town shall accept such performance by such Construction Lender as if performed by the Developer.

(iv) In the case of any such default by the Developer which is not susceptible of being cured by such Construction Lender, the Town agrees that it will take no action to obtain specific performance of this Agreement or to effect a termination of this Agreement by reason of such default without first giving to each such Construction Lender a reasonable period of time after notice under Subsection 6.2(b)(iii) either to obtain possession of the Development Property (including possession by receiver) and to cure such default, in the case of a default which can be cured when such Construction Lender has obtained possession, or to institute foreclosure proceedings and to complete such proceedings or otherwise to acquire the Developer's interest, in the case of a default which cannot be cured by such Construction Lender without first obtaining the interest of Developer in the Development Property; provided, however (1) that such Construction Lender shall not be required to continue such possession or to continue such foreclosure or other proceedings if said default shall be cured, (2) that the period for obtaining possession or acquiring the interest of the Developer by foreclosure or otherwise, as the case may be, shall be extended for any period during which such action is enjoined or stayed by a court of competent jurisdiction, (3) that such Construction Lender shall continue good faith efforts to perform all of the Developer's other obligations under this Agreement which are susceptible of being performed by such Construction Lender during the period of such forbearance, and (4) that nothing herein shall require any such Construction Lender to begin or continue such possession or foreclosure or other proceedings or preclude the Town from exercising (subject to the provisions of this Article VI) any rights or remedies under this Agreement with respect to any other defaults by Developer during the period of such forebearance;

(v) In the event of the termination of this Agreement for any reason, or in the case of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, the Town agrees to enter into a new agreement with the Construction Lender effective as at the date of such termination, rejection or disaffirmance, upon all the covenants and agreements, terms, provisions and limitations contained in this Agreement (including, without limitation, this section), provided that such Construction Lender shall, in writing, request the Town to enter into such new agreement within sixty (60) days after the effective date of such termination, rejection or disaffirmance. The provisions of this clause shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this clause were a separate and independent agreement, and during the period ending 60 days after the effective date of the termination, rejection or disaffirmance of this Agreement, any such Construction Lender may quietly enjoy the Property without hindrance by the Town or any person or party claiming by, through or under the Town.

(vi) Within fifteen (15) days after receiving a written request so to do from any such Construction Lender, the Town Designee shall deliver to such Construction Lender a statement, certified by an authorized official, stating either (1) that this Agreement is in full force and effect and no default hereunder has occurred and is then continuing, or (2) that this Agreement is then in default, specifying the nature and status of such default. If such statement is not delivered by the Town Designee to the Construction Lender so requesting it within fifteen (15) days after such request, such Lender may conclusively assume that this Agreement is in full force and effect and that no default hereunder has occurred and is then continuing.

ARTICLE VII. INSURANCE

7.1. Insurance Coverage:

(a) The Developer or the Condominium Association shall, until the Completion of Construction of the entire Project and establishment of the Condominium, keep the Development Property, any buildings and improvements now or hereafter situated on the Development Property, and all of the insurable property and equipment in respect of the Development Property insured by fire and extended coverage insurance and builder's risk insurance to the same extent and amount which is normally required by institutional mortgagees for similar property and equipment. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than the full insurable replacement value of the Development Property (other than land and foundations) and equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and loss thereunder shall be payable to the Developer, the Construction Lender, and to the Town as their interests may appear.

The Developer shall also maintain in full force from the date upon which the Developer first enters the Development Property for any reason, and thereafter until the Completion of Construction of the entire Project a policy of comprehensive public liability insurance, including the so-called broadening endorsement (i.e., broad form) written on an occurrence basis, insuring against all claims for injury to or death of persons or damage to property on or about the Development Property or arising out of the use of the Development Property and under which the Town, such other persons as may be set forth in a notice given from time to time by the Town, any Construction Lender and the Developer are named as insureds, as their respective interests appear, each with the same effect as if separately insured. The minimum limits of liability of such insurance shall be: Bodily injury - $1,000,000 per occurrence and in the aggregate over the term of the policy, and Property Damage - $500,000 per occurrence. The Construction Lender shall have the right from time to time to increase such minimum limits upon notice to the Developer, provided that any such increase shall

provide for coverage in amounts similar to like coverage being carried on like property in the greater Boston area.

Furthermore, the Developer shall obtain or cause to be obtained appropriate Worker's Compensation insurance.

(b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

(c) Certificates of such policies and renewals thereof shall be filed with the Town on or about the effective date thereof.

7.2. Town May Procure Insurance if Developer Fails To Do So:

In the event the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Town at its option may, without limiting any other rights or remedies available to the Town, procure or renew such insurance, and all amounts of money paid therefor by the Town shall be payable by the Developer to the Town with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the Town to the date of payment thereof by the Developer. Ten (10) days prior to procuring or renewing any such insurance, the Town shall notify the Developer or the Condominium Association, whichever is the named insured, of its intention to procure or renew such insurance. In the event that the Developer or Condominium Association, as appropriate, has not provided the Town with evidence satisfactory to the Town Designee of such insurance within five (5) days of such notice, the Town may proceed to procure such insurance. The Town shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by the Town. In the event the Town has not received payment from the Developer for the cost of any such insurance procured or renewed by the Town, plus interest accrued within twenty (20) days from the giving notice of notice by the Town to the Developer, the Town shall have a continuing lien against the Development Property for such amounts and shall be entitled to record such lien against the Development Property.

7.3. Developer's Obligations With Respect To Restoration And Reconstruction:

(a) Whenever any Improvement, or any part thereof, constructed on the Development Property shall be

damaged or destroyed prior to Completion of Construction of the entire Project and establishment of the Condominium for the entire Project, lease of the Senior Center to the Town, and thereafter until all Units have been sold by the Developer to Persons who are not Affiliated Parties of the Developer, the Developer shall (to the extent permitted under the Condominium Documents, if the Condominium shall have been established at such time, and with the consent of the Construction Lender) proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvement, shall be deposited in a separate account of the Developer or of any Construction Lender.

(b) The insurance money and any other proceeds so collected, to the extent such proceeds are available to the Developer, shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction in accordance with the approved plans and specifications referred to in the Special Permit to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any Construction Lender, and subject to the Condominium Documents if the Condominium shall have been established at such time.

(c) Subject to the provisions of the Condominium Documents if the Condominium shall have been established at such time, the Developer, with the written approval of the Town and any Construction Lender, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and, in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be paid to the Developer, subject to the requirements of Article V with respect to insurance proceeds arising out of damage to or destruction of the Senior Center, and subject to the rights of any

Construction Lender. In such event, the covenants and restrictions contained in the Deed shall terminate as to those Improvements or portions thereof which have been damaged or destroyed and not reconstructed or restored.

(d) Developer shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been so destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any Construction Lender (or, if the conditions then prevailing require a longer period, such longer period as the Town may reasonably approve in writing), to the extent such funds are available, and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within eighteen (18) months after the start thereof.

ARTICLE VIII. RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A BREACH BY DEVELOPER

8.1. Failure by Developer to Complete Construction, Establish the Condominium or Discharge Encumbrances; Unauthorized Transfers of Interest:

(a) If the Developer shall fail to perform its obligations under this Agreement with respect to commencement and completion of construction of Improvements in accordance herewith and with the Special Permit, the Plan and the Order of Conditions; or

(b) If the Developer shall fail to establish the Condominium as provided in Section 3.1 or shall employ for such purpose any procedure or document not in accordance with this Agreement or approved in writing by the Town; or

(c) If the Developer shall place or suffer to be placed on the Development Property any encumbrance or lien not expressly permitted by this Agreement or authorized in writing by the Town which is not discharged within fifteen (15) days after the Developer receives notice of such encumbrance or lien, unless such encumbrance or lien cannot be discharged within such fifteen-day period, in which case the Developer shall commence to discharge such encumbrance or lien promptly within such fifteen

(15) day period and thereafter continuously and diligently complete the discharge of the same; or

(d) If there is any transfer of the Development Property or any part thereof or interest therein in violation of this Agreement, or if the Developer shall fail to perform any other obligation under this Agreement;

Then the Town or Town Designee shall provide Developer with written notice of such noncompliance, which notice may be recorded.

Subject to the provisions set out below, and in the event that Developer fails to cure such noncompliance within sixty (60) days after receipt of notice of noncompliance unless such noncompliance cannot be cured within such sixty day period, in which case the Developer shall commence to cure such noncompliance within such sixty (60) day period and thereafter continuously and diligently complete the cure of the same, the Town has the right to exercise either Option A or Option B, or both options, as provided in this Agreement. Notwithstanding the foregoing, no failure of the Town to exercise Option A or Option B or both following a notice of noncompliance as set forth above, shall be construed as a waiver of any rights of the Town to exercise Option A or Option B or both under this Agreement;

The Town shall have the right to exercise Option A or Option B or both by a written notice given by the Town to Developer on or before the earlier to occur of October 9, 2027 or the date of recording of an instrument signed by the Town terminating either such Option. Such written notice shall specify which option the Town is exercising. The Developer shall deliver the deed to the property specified in the written notice to the Town on or before the sixtieth (60th) business day following the determination of the purchase price as set forth in Section 8.3 below, hereinafter referred to as the Closing Date.

After the Town has received written notice from the Developer of the existence of an institutional lender holding a first or second mortgage of record on all or any portion of the Development Property in accordance with the provisions of Article VI hereof, the Town shall send copies of all notices of noncompliance under this Article VIII to such institutional mortgagee of record, and each such institutional mortgagee shall have the right concurrently with Developer to cure any noncompliance. The curing of such noncompliance by any such institutional mortgagee of record shall be treated as performance by the Developer, but nothing herein shall be deemed to impose an obligation on any such

institutional mortgagee of record to cure any noncompliance under this Article VIII.

8.2. Zoning. In the event that the exercise of Option A and the acquisition of the Option A Property by the Town would create a nonconformity as to zoning for the Developer's approved development of the Development Property as set forth in this Agreement, the Town shall have no right to exercise Option A to purchase the Option A Property unless, within one hundred and eighty (180) days of its notice to the Developer of noncompliance with this Development Agreement or other permits, approvals or agreements as set forth in Subsection 8.1(a) above, the Town's Zoning Board of Appeals shall have granted a variance or such other zoning relief as may be necessary to cure the nonconformity created by the exercise of Option A and shall have followed the necessary procedures to grant and implement such variances or other zoning relief (which may, in some instances require taking a vote at a Town meeting).

8.3. Purchase and Sale Agreement. As soon as possible after the exercise of either Option, the Developer and the Town shall enter into a purchase and sale agreement substantially in the form of the attached Exhibit L, which agreement shall govern the consummation of the conveyance of the appropriate Option Property and shall incorporate the terms and conditions of this Agreement, including without limitation the Closing Date and Purchase Price. The Town and Developer agree that time shall be of the essence of this Agreement. The purchase price of the Option A Property, or the Option B Property, as the case may be, shall be the fair market value of such property as of the date of the exercise of the option pertaining to such property. In the event that the Town and the Developer cannot agree in writing on such purchase price within ten days of the exercise of either Option then the purchase price of either the Option A Property or the Option B Property, as the case may be, shall be determined by appraisal of the fair market value of such property as of the date of the exercise of the option as follows. Within twenty days of the Town's exercise of either Option A or Option B, or both, the Town and the Developer shall each designate an impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts, to determine the fair market value of the Option A Property or the Option B Property. The expense of each appraiser shall be the responsibility of the party designating the appraiser. The unanimous written decision of the two appraisers so chosen shall be conclusive and binding upon the Developer and the Town. If the two appraisers shall fail to reach a unanimous written determination as to the purchase price within thirty days, the two appraisers shall designate a third impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts. The expense of the third

appraiser so selected shall be divided equally between the Town and the Developer. The written decision of a majority of the three appraisers so selected shall be rendered within thirty days and shall be conclusive and binding on the Town and the Developer as to the purchase price.

8.4. Termination of Option A. Option A may be terminated in advance of its scheduled expiration date solely pursuant to Section 2.2 hereof and in no other manner.

8.5. Termination of Option B. Option B shall be terminated as follows. Upon the issuance of the first bulding permit for the South Phase, the Town shall execute a release, in recordable form, with respect to all of the property covered by the Subordinated Option, except for that portion of the Development Property on which the North Phase will be constructed. The first building permit for the South Phase shall be issued only after the Developer has constructed the access roads and utilities in accordance with the Plan, the Special Permit and the Order of Conditions and to the satisfaction of the Town Designee. Following the Completion of Construction of twenty seven (27) Units and the Senior Center in the South Phase, the Town shall execute a release, in recordable form, of the balance of the Option B Property, applicable to the North Phase. Following termination of the Town's rights under this Agreement with respect to all Phases of the Project, the Town shall, at the request of Developer, execute an instrument in recordable form, acknowledging termination of all of its rights under Option B, and Option B shall be of no further force and effect between the parties.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Waiver. Except as otherwise expressly provided herein, failure on the part of either party of this Agreement to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is convenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent action by such party.

9.2. Invalidity of Particular Provisions. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall, at any time or to any extent, be invalid or unenforceable, the

remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9.3. Provisions Binding. This Agreement may be cancelled, modified or amended only by a written instrument executed by both parties hereto.

9.4. Governing Law. This Agreement and the performance hereof shall be governed exclusively by the laws of Massachusetts, as the same may from time to time exist.

9.5. Recording. The parties hereto agree that a fully executed original of this Agreement shall be recorded with the Registry of Deeds and the Registry District. The entire cost of recording this Agreement shall be borne by the Developer.

9.6. Notices. Except as otherwise expressly provided herein, whenever notices, demands, requests or other communications shall or may be given under this Agreement either to the Town or to the Developer, the same shall be deemed adequately given if in writing and hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested: If intended for the Town, addressed to it at the mailing address set forth on the first page of this Agreement, with copies to the Town Counsel; and, if intended for Developer, addressed to the Developer at the mailing address set forth on the first page of this Agreement, with copies to Richard M. Cotter, Esquire, Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and Stanley L. Gordon, Esquire, D'Agostine, Levine & Gordon, P.C., 268 Main Street, Acton, Massachusetts 01720; or to such other address or addresses as may from time to time hereafter be designated by either party to the other by like notice; and such notices shall be effective upon receipt if hand delivered or upon deposit in the U.S. mail if subsequently received.

The Town and the Developer each agree to give prompt written notice to the other party of all material notices received by it from third parties relating to the Development Property.

9.7. Interpretation. As used herein, the singular shall include the plural and the plural shall include the singular as the context may require. The article and section headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the

interpretation, construction or meaning of the provisions of this Agreement. References herein to successors and assigns of the Developer are not intended to constitute a consent to assignment or transfer by the Developer but refer only to those instances in which the Town shall have given consent thereto in accordance with the terms of this Agreement.

9.8. No Partnership. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any association between the Town and the Developer, or cause the Town to be responsible in any way for the debts or obligations of the Developer.

9.9. Secondary Mortgage Market. So long as no substantive changes are required, the Town agrees to modify the restrictions contained herein and to be contained in the various documents required hereunder if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require such modifications as a condition precedent to its approval or agreement to acquire mortgages on the Units given or to be given in connection with the sale of such Units to persons or entities not a party to this Agreement.

9.10. Certificates of Completion and Release of Conditions. If and when the Developer shall have performed and complied with some or all of the agreements and conditions set forth in this Agreement, the Town shall upon request of the Developer deliver to the Developer one or more certificates of completion and release of such conditions, in recordable form, signed by the Town Designee and stating that the Developer has performed and complied with some or all of the agreements and conditions set forth in this Agreement to the satisfaction of the Town. Such a certificate shall be conclusive evidence of the Developer's performance of such agreements and compliance with such conditions as are stated in such certificate and of the release of the Developer and the Development Property from such conditions by the Town, provided, however, that such certificates shall not discharge or release the Developer, its successors or assigns or the Development Property from the terms, conditions, covenants and restrictions contained in the Condominium's master deed the Order of Conditions and in the Special Permit, or from building, zoning and other applicable laws, ordinances or regulations.

9.11. Authority of Developer. The Developer and any officer or trustee of the Developer executing this Agreement and any other documents required in connection with this Agreement or any conveyance to be made hereunder hereby warrant that they have the requisite power and authority to enter into and carry out this Agreement and all other documents executed and delivered in connection herewith or therewith. The execution

and delivery of this Agreement and all other documents executed and delivered in connection with this Agreement have been duly authorized in accordance with the Developer's Declaration of Trust (including any required action of all beneficiaries of the Trust) or by the Developer's board of directors, as applicable, to the extent required by law or the Developer's articles of organization, by-laws, or declaration of trust, as applicable and no other action of the Developer is required for the execution, delivery and performance of this Agreement, and all other documents executed and delivered in connection herewith or therewith.

9.12. Town's Consent. Where the consent or approval of the Town, the Town Designee or the Conservation Administrator is required under the terms and conditions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

9.13. Delay Beyond Developer's Control. In the event that the Developer's performance pursuant to the terms and conditions of this Agreement is delayed due to Town action or inaction, other governmental regulation, unusual scarcity of or inability to obtain labor or materials, strikes, labor difficulties, casualty, market conditions or other causes reasonably beyond the Developer's control, the dates for performance required hereunder shall be extended by a period equal to that of the aforesaid delay; in no event, however, shall the dates for performance required hereunder ever be extended by more than one year. The parties acknowledge, however, that the Town may extend any such date in its sole discretion, which discretion may not be unreasonably exercised for any reason, by granting written permission to extend any such date.

9.14. No Assignment.

(a) Neither The Town nor the AHA shall assign or transfer its rights to purchase any of the five (5) Restricted Units granted hereunder, except that such right may be assigned or transferred to another municipal or quasi-municipal not-for-profit agency or organization.

(b) The Town has entered into this Agreement with the Developer in reliance upon the unique knowledge, experience and expertise of the Developer in the planning and implementation of construction of the Project. The Developer shall not voluntarily assign, transfer or otherwise convey its rights and obligations hereunder, including any transfer, assignment or conveyance to a corporation or other entity owned or controlled by Roy C. Smith or the Developer, without the written permission of the Town Designee.

9.15. Rule Against Perpetuities.

If the Rule Against Perpetuities or any rule of law with respect to restriction on the alienation of the Property shall limit the time within which any event or events hereunder must occur, then such event or events, as the case may be, to which such rule applies shall not occur later than the expiration of 20 years after the death of Roy C. Smith, Nancy E. Tavernier, William Weeks, Donald Gilberti, or any of their issue now living.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal this _____ day of _____, 1989.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

_____

_____

_____

_____

_____

High Street PCRC Trust

By_____
Roy C. Smith, as trustee

_____
Roy C. Smith, Individually

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named _____ and _____ acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen of the Town of Acton, before me

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, as trustee of High Street PCRC Trust, and acknowledged the foregoing instrument to be his free act and deed as trustee as aforesaid.

_____
Notary Public
My Commission Expires:

Commonwealth of Massachusetts

_____, ss. _____, 1989

Then personally appeared the above-named Roy C. Smith, and acknowledged the foregoing instrument to be his free act and deed, as an individual, before me.

_____
Notary Public
My Commission Expires:

EXHIBITS TO DEVELOPMENT AGREEMENT

EXHIBIT	TITLE
Exhibit A:	Site Plan
Exhibit B:	Description of Averitt Land
Exhibit C:	Easement to Averitt Land
Exhibit D:	Conservation Deed Restriction
Exhibit E:	Guidelines
Exhibit F:	Condominium Documents
Exhibit G:	Right of First Refusal
Exhibit H:	Lease of Senior Center
Exhibit K:	Purchase & Sale Agreement for AHA Units
Exhibit L:	Purchase & Sale Agreement for Option A or B property

EXHIBIT B

Description of Averitt Land

Two parcels of land situated in the Town of Acton, Middlesex County, Massachusetts, the first parcel being shown as an area containing 26.5 acres of land, more or less, as shown on a plan entitled "Plan of Land in Acton, Mass. for Acton Conservation Commission" dated January 10, 1980, prepared by Acton Survey & Engineering, Inc., recorded with the Middlesex South Registry District of the Land Court at Book 13948, Page 187, as Plan No. 421 of 1980; the second parcel being shown as Lot C_1 as shown on a plan entitled "Subdivision of Lot C shown on a plan filed with Cert. of Title No. 8637 South Registry District of Middlesex County Land in Acton", dated May, 1918, prepared by Welsh & Parker, Civil Engineers, recorded with said Registry District as Certificate No. 8941, in Book 60, Page 433, and to which plans reference may be had for a more particular description.

EXHIBIT C

EASEMENT

ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST, under Declaration of Trust, dated March 5, 1985, recorded in the Middlesex South District Registry of Deeds, Book 18611, Page 409 and Document 758061 in the Registered Land Section of said Deeds, in consideration of One ($1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, grants to the Inhabitants of the Town of Acton, an easement for the right to pass on foot or by motor vehicle in common with others so entitled, from High Street over Audubon Lane and Brewster Lane and over the roadway to be constructed within the 40 Ft. Wide Access Easement for purpose of access from and to High Street to the gravel parking lot in the land of the Town of Acton, all as shown on a plan entitled, "Open Space Plan of Audubon Hill in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, Acton Survey & Engineering, Inc., to be recorded herewith in said Deeds, reference to which plan may be had for a more particular description of said Easement.

The easement is to be limited strictly to access from High Street to the land of the Town of Acton for use of the Town of Acton land for passive recreational uses and all maintainence on the land for passive recreational purposes.

For the Grantor's title see deed of Norman R. Veenstra to the Grantor, dated October 8, 1987, recorded in said Deeds, Book 18611, Page 437 and as Document 758060 in the Registered Land Section of said Deeds.

Executed under seal this ____ day of June, 1989.

HIGH STREET PCRC TRUST

By:_____
Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of June, 1989 personally appeared before me the above named ROY C. SMITH, Trustee aforesaid, and acknowledged the foregoing instrument to be his free act and deed.

_____
Notary Public
My commission expires:_____

EXHIBIT H

LEASE

This instrument is an Indenture of Lease between ROY C. SMITH, as Trustee of the HIGH STREET PCRC TRUST u/d/t/ dated March 5, 1985, recorded with the Middlesex South Registry of Deeds at Book 18611, Page 409 and with the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Landlord"), and the TOWN OF ACTON, MASSACHUSETTS, a Massachusetts municipal corporation acting by and through its Board of Selectmen (the "Tenant").

The parties to this instrument hereby agree with each other as follows:

ARTICLE I

SUMMARY OF BASIC LEASE PROVISIONS

1.1 BASIC DATA

Date:	June ___, 1989
Landlord:	Roy C. Smith, as Trustee of the High Street PCRC Trust
Present Mailing Address of Landlord:	292 Great Road Acton, Massachusetts 01720
Tenant:	Town of Acton
Present Mailing Address of Tenant:	Acton Town Hall Acton, Massachusetts 01720 Attn: Town Manager
Leased Premises:	The Landlord's building to be constructed in accordance with the Plan referenced as Exhibit 1 to a Special Permit granted by the Town of Action Planning Board to the Landlord on March 4, 1989 (the "Building"), the approximately 1.66 acres of land (the "Lot") on which the Building is located, commonly known as the Town of Acton Senior Center, a common area located in the Audubon Hill South Condominium, Acton, Massachusetts 01720, together with all appurtenances thereto

	and fixtures thereon, including the Parking Lot. The Building, Lot, appurtenances and fixtures are collectively referred to herein as the "Leased Premises".
Initial Lease Term:	Ninety nine (99) calendar years (plus the partial calendar month, if any, following the Commencement Date).
Option to Extend:	Tenant has the option to extend the term of this Lease for an additional ninety nine (99) years on the terms set forth in Section 3.4.
Annual Rent:	One Dollar ($1.00) per year.
Commencement Date:	As determined pursuant to Section 3.1.
Permitted Use:	The Building may be used as a center for the use of all Senior Citizens who reside in the Town of Acton and uses incidental thereto, and such other uses which conform, as of right or otherwise, with the zoning laws of the Town of Acton, Massachusetts from time to time applicable thereto.

1.2 ENUMERATION OF EXHIBITS

Exhibit A:	Plan showing the planned configuration and location of the Building and the Lot.

ARTICLE II

2.1 DEMISE AND LOCATION OF PREMISES

The Landlord hereby leases to the Tenant, and the Tenant hereby accepts from the Landlord, the premises (the "Premises") described in Section 1.1 as the Leased Premises. Attached hereto as Exhibit A is a plan showing the planned location of the Building and the Lot.

ARTICLE III

TERM OF LEASE

3.1 COMMENCEMENT DATE

The original term (the "Term" or "Lease Term") of this Lease shall be for the period specified in Section 1.1 as the Lease Term. If Section 1.1 provides for a fixed Commencement Date, then the Commencement Date of the term hereof shall be such date. Otherwise, the term of this Lease shall commence on, and the Commencement Date shall be, the first to occur of:

(a) the date on which the Premises shall be deemed ready for occupancy, as defined in Section 3.2 below; or

(b) the date upon which Tenant commences beneficial use of the Premises.

Tenant shall, in all events, be treated as having commenced beneficial use of the Premises when it begins to move into the Premises furniture and equipment for its regular business operations.

As soon as may be convenient after the Commencement Date has been determined, Landlord and Tenant agree to join with each other in the execution, in recordable form, of a written Declaration in which the Commencement Date and specified term of this Lease shall be stated.

3.2 PREPARATION OF PREMISES FOR OCCUPANCY

The Premises shall be deemed ready for occupancy on the date on which (i) the Premises, together with sufficient facilities for reasonable access and service thereto, have been completed, except for items of work and mechanical adjustment of equipment and fixtures which because of season or weather or nature of the item cannot practicably be done at the time or are not necessary to make the Premises reasonably tenantable for its Permitted Use; and (ii) there has been delivered to Tenant both a registered architect's or engineer's certificate of such completion, and a certificate of occupancy covering the Premises (temporary or permanent) issued by the governmental authority having jurisdiction thereof.

Landlord shall complete as soon as conditions practicably permit all items of work excepted under the above paragraph and Tenant shall not use the Premises in such manner as to increase the cost of such completion.

3.3 TENANT'S CANCELLATION OPTION

The parties agree that Tenant shall have the exclusive option to terminate this Lease upon not less than one year's prior written notice to Landlord, such termination to be effective and such option to be exercised as hereinafter provided. To exercise such option, Tenant shall give written notice to Landlord of the election of such option to terminate, which notice shall specify the effective date of such termination; such termination date shall be no sooner than one year after the date of such notice. If Tenant gives such notice, the rights and obligations of the parties shall cease as of the termination date specified in such notice and rent shall be adjusted as of such termination date.

3.4 EXTENSION OPTION

If the Tenant is not in default hereunder, the Tenant shall have the right to extend the Term of this Lease for one ninety-nine (99) year extension to the Term, provided that on or before the date nine (9) months prior to the expiration of the original Lease Term, the Tenant gives written notice of its election to extend this Lease upon the same terms, covenants and conditions contained in this Lease.

ARTICLE IV

RENT AND OTHER CHARGES

4.1 RENT

Tenant shall pay to Landlord Annual Rent, in arrears, on the second day of each calendar year during the Lease Term. Payments of Annual Rent shall be made to Landlord, at Landlord's mailing address or at such other place as Landlord shall from time to time designate by written notice to Tenant.

Landlord and Tenant acknowledge that it is the intention that use of the Building and lot be a gift from Jean and Roy Smith in memory of their parents Arthur and Anna Cloonan, and John and Karin Smith, all of Holden, Massachusetts. Tenant agrees that Landlord may erect or cause to be erected a plaque located on the Leased Premises substantially to such effect.

4.2 TENANT TO PAY REAL ESTATE TAXES

Tenant shall be responsible for the payment before the same become delinquent, of all real estate taxes and taxes in the nature of real estate taxes (the "Taxes") upon the Building and the Lot, even if the Landlord shall construct an addition to the Building or construct an additional structure or structures on the Lot; provided, however, that the Town

may seek the full or partial abatement of Taxes on the Leased Premises, for so long as the Tenant occupies any part of the Premises. However, if authorities having jurisdiction assess real estate taxes, which Tenant deems excessive, Tenant may defer compliance therewith to the same extent permitted by the laws of the jurisdiction in which the same are located, so long as the validity or amount thereof is contested by Tenant in good faith, and so long as Tenant's occupancy of the Premises is not disturbed.

ARTICLE V

USE OF THE PREMISES

5.1 PERMITTED USES

The Tenant shall use the Premises only for the Permitted Use specified in Section 1.1. The Landlord warrants that as of the Commencement Date the use of the Premises as a senior citizens' center is permitted as of right by all applicable laws and regulations, including the applicable building and zoning codes and that there exist no deed restrictions or other restrictions as to the use of the Premises for the above-mentioned purposes. The Landlord warrants that it has full right and lawful authority to enter into this Lease, that this Lease has been duly authorized pursuant to the applicable trust documents and that it has good and marketable record title to the Premises. If any law, ordinance or regulation, or deed restriction or other restriction at any time prohibits the Permitted Use referred to in Section 1.1, then the Tenant may, at its option, terminate this Lease upon notice to the Landlord without prejudice to any other rights the Tenant may have at law or in equity.

The Tenant shall not commit, or suffer to be committed any waste upon the Premises or any public or private nuisance.

5.2 ALTERATIONS

The Tenant may, at its own expense, place office and trade fixtures, office equipment and the like in the Premises and make alterations, improvements, or additions to the Premises provided such work shall be performed in a good and workmanlike manner employing materials of good quality and in compliance with laws, rules, orders and regulations of governmental authorities having jurisdiction thereof. Furthermore, should the Tenant require sewage discharge capability in excess of that contemplated in the Plan for the Senior Center, the Tenant shall, at its own expense, obtain all necessary permits for and perform or cause to be performed the connection of the Building to the applicable public sewage system. All alterations, additions and improvements made by the Tenant to the Premises shall remain

therein and, at termination of the Lease, shall be surrendered as a part thereof, except for fixtures and equipment installed at the Tenant's cost, which fixtures and equipment may be removed by the Tenant. The Tenant shall, at Tenant's own expense, promptly repair all damage to the Premises or the Building resulting from any such removal. The Tenant shall not be required to redecorate the Premises at the termination of this Lease.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

6.1 PERMITTED ASSIGNMENT AND SUBLETTING

The Tenant may not assign or otherwise transfer this Lease or any interest herein, or sublet, without the prior written consent of the Landlord, except the Tenant may assign this Lease to another municipal or quasi-municipal agency or organization without the Landlord's consent.

In the event of an assignment of this Lease by the Tenant, the Landlord shall execute an agreement with the assignee whereby the assignee agrees directly with the Landlord to be bound by all Tenant obligations hereunder and by the execution of such agreement, the Tenant shall be released of all liability for Tenant obligations under this Lease.

ARTICLE VII

RESPONSIBILITY FOR REPAIRS

7.1 REPAIRS

Except as otherwise provided in this Article VII, from and after the Commencement Date, and until the end of the Lease Term, the Tenant shall keep the interior of the Premises (including ceilings, interior walls, windows and window glass, and floors of the Premises and all sanitary and toilet facilities in the Premises) in good order, condition and repair, reasonable wear and tear and damage by fire or casualty and repairs made necessary as a result of a taking by condemnation or right of eminent domain and matters for which Landlord is responsible hereunder only excepted; and shall keep in good order, condition and repair the plumbing, electrical, lighting, heating, ventilating equipment, air-conditioning and other mechanical equipment of the Building and all utility lines, wires, pipes, ducts and conduits serving the Building; and the Tenant shall surrender the Premises at the end of the Lease Term in such condition.

The Landlord shall keep in good order, condition and repair the roof and exterior of the Building, the foundation of the Building, the structural elements of the Building and of the Premises, and the parking facilities on the Lot, and shall be responsible for all other repairs except those required to be made by the Tenant. Furthermore, the Landlord shall maintain and landscape the grounds in a manner consistent with the balance of the Audubon Hill project and a certain Conservation Restriction executed by the Landlord placed on property which includes the Lot.

ARTICLE VIII

UTILITIES

8.1 LANDLORD'S COVENANT

Landlord covenants that at the commencement of the Lease Term the plumbing, electrical, lighting, ventilating and heating equipment will all be in good mechanical and operating condition, and that the heating equipment will be of sufficient capacity to heat the Leased Premises at 70 degrees Fahrenheit when the outside temperature is 0 degrees Fahrenheit or above.

8.2 HEAT, VENTILATION AND AIR CONDITIONING

The Tenant shall be responsible for paying all costs of electricity and other utilities used by the systems providing heating and ventilation to the Building.

8.3 WATER, ELECTRICITY, OTHER UTILITIES

The water, septic sewer, electricity and other utilities furnished to the Premises, including electricity used in heating and ventilating the Premises, and other utilities shall be separately metered. The Tenant shall pay directly to the supplier of such utility services the cost of such utilities consumed in the Premises.

8.4 SEWER

In the event that the Tenant elects to connect the Building with the appropriate public sewage system as provided in Section 5.2 hereof, the Tenant agrees to pay directly to the supplier of such utility service the cost of such utilities consumed in the Premises.

ARTICLE IX

INSURANCE AND INDEMNITY

9.1 TENANT'S LIABILITY INSURANCE

The Tenant agrees to maintain in full force from the date upon which the Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as the Tenant is in occupancy of any part of the Premises, a policy of comprehensive general liability insurance, written on an occurrence basis and including broad form contractual liability coverage insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, and under which the Landlord is named as an additional insured.

The minimum combined single limit of liability of such insurance shall be one million dollars ($1,000,000) per occurrence.

Such insurance coverage shall be effected upon terms reasonably available with insurers authorized to do business in Massachusetts and under valid and enforceable policies which shall be non-amendable and non-cancellable without ten days' prior notice to the respective insureds. Upon the request of the Landlord, a duplicate original policy or certificate of such policy shall be delivered to the Landlord.

9.2 CASUALTY INSURANCE

The Tenant shall procure, keep in force, and pay for, at its sole expense, an All Risk (Open Perils) policy of insurance upon the Building and its fixtures and other equipment, including fire and extended coverage, and in any event in an amount at least equal to the full replacement cost of the Building, subject to appropriate co-insurance requirements, as well as insurance against breakdown of boilers and other machinery as customarily insured against, under which the Landlord is named as an additional insured and to supply to the Landlord from time to time certificates of all such insurance issued by or on behalf of the insurers named therein by a duly authorized agent.

9.3 NON-SUBROGATION

Insofar as, and to the extent that, the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies (even though extra premium may result therefrom), the Landlord and the Tenant mutually agree that, with respect to any hazard which is covered by insurance required to be carried by them hereunder, respectively, the one carrying such insurance and suffering

such loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. In the event that extra premium is payable by either party as a result of this provision, the other party shall reimburse the party paying such extra premium. If, at the request of one party, this release and non-subrogation provision is waived then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective. If the release of either party provided above shall contravene any law with respect to exculpatory agreements, the liability of the party for whose benefit such release was intended shall remain but shall be secondary to that of the other party's insurer.

9.4 TENANT'S INDEMNITY

Except to the extent caused by any act, fault, omission, misconduct or negligence of Landlord or Landlord's agents or employees, Tenant agrees to indemnify and save harmless the Landlord from and against all claims, expenses, or liability of whatever nature (a) arising from any act, omission, or negligence of Tenant, Tenant's contractors, licensees, agents, servants, employees, or customers or (b) arising directly or indirectly from any occurrence, accident, injury, or damage, however caused, to any person or property on or about the Premises.

The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel acceptable to Landlord or counsel selected by an insurance company that has accepted liability for any such claim.

9.5 LANDLORD'S INDEMNITY

The Landlord shall indemnify and save harmless the Tenant and its Board of Selectmen, officers, agents and employees from and against all claims, expenses (including, without limitation, attorney's fees) or liability of whatever nature arising: (a) from any act, fault, omission, misconduct or negligence of the Landlord, or the Landlord's contractors, licensees, agents, servants or employees; or (b) directly or indirectly out of default by the Landlord under any of the terms or covenants of this Lease; provided, however, that in no event shall the Landlord be obligated under this Section 9.5 to indemnify the Tenant, its Selectmen, officers, agents and employees, where such claim, expense or liability arose from any act, omission, fault, negligence or other misconduct of the Tenant or such persons on or about the Premises or the Building.

This indemnity and hold harmless agreement shall include indemnity against all expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof (with counsel reasonably acceptable to the Landlord).

ARTICLE X

LANDLORD'S ACCESS TO PREMISES

10.1 LANDLORD'S RIGHT OF ACCESS

The Landlord shall have the right to enter the Premises during normal business hours upon reasonable prior notice to the Tenant, and in the event of an emergency at any hour without notice, for the purpose of making repairs to the same, and the Landlord shall also have the right to make access available during normal business hours upon reasonable prior notice to the Tenant to prospective or existing mortgagees or purchasers of the Premises. The Rent and all other charges payable hereunder shall abate for any period and to the extent that any portion of the Premises is made untenantable by such activity.

ARTICLE XI

CASUALTY

11.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE."

The term "substantial damage" as used herein, shall refer to damage which is of such a character that the same cannot, in the Tenant's reasonable opinion, be reasonably expected to be repaired within forty-five (45) days from the time that such work would commence. Any damage which is not "substantial damage" is "partial damage."

11.2 PARTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be partial damage to the Building by fire or other casualty, the Landlord shall promptly proceed to restore the Building to substantially the condition in which it was immediately prior to the occurrence of such damage and shall diligently pursue such restoration, to the extent insurance proceeds are available therefor.

11.3 SUBSTANTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be substantial damage to the Building by fire or other casualty and if such damage shall unreasonably interfere with the Tenant's use of

the Premises as contemplated by this Lease, the Landlord shall promptly and diligently proceed to restore, or cause to be restored, the Building to substantially the same condition in which it was immediately prior to the occurrence of such damage, to the extent insurance proceeds are available therefor, unless Tenant, within thirty (30) days after the occurrence of such damage, shall give notice to the Landlord of its election to terminate this Lease. If Tenant shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

11.4 ABATEMENT OF RENT

If during the Lease Term the Building or the Premises shall be damaged by fire or other casualty and if such damage shall interfere with the Tenant's use of the Premises as contemplated by this Lease, the Rent and all other charges payable hereunder, or a fair and just proportion thereof, according to the nature and extent of such loss of use, shall be suspended or abated until the Building or the Premises, as the case may be, are restored as provided in this Article XI.

ARTICLE XII

EMINENT DOMAIN

12.1 RIGHTS OF TERMINATION FOR TAKING

If the Building, the Lot or a portion thereof shall be taken by condemnation or right of eminent domain (including a temporary taking) and if such taking shall be such as in the ordinary course would interfere with the Tenant's use of the Premises for the purposes leased hereunder (including, without limitation, interference with the use of Tenant's Parking Spaces), the Tenant shall have the right to terminate this Lease by notice to the Landlord of its desire to do so, provided that such notice is given not later than thirty (30) days after the effective date of such taking.

Should any part of the Building, the Lot or any portion thereof be so taken and should this Lease be not terminated in accordance with the foregoing provisions, the Landlord shall with all reasonable diligence, restore the Building to an architectural unit that is reasonably suitable to the uses of the Tenant and to the extent applicable, provide replacement parking facilities substantially equal in size and, to the extent possible, accessibility, to those parking facilities taken, to the extent of proceeds available therefor. If the Landlord shall not have completed such restoration work to the extent necessary to enable the Tenant to use the Premises for the purposes and in the manner contemplated by

this Lease by the expiration of ninety (90) days after the effective date of such taking, then the Tenant may terminate this Lease by notice to the Landlord with the same force and effect as if such date were the date originally established as the expiration date hereof.

12.2 ABATEMENT OF RENT

In the event of a taking described in Section 12.1, the Rent and all other charges payable hereunder, or a fair and just proportion thereof according to the nature and extent of the Tenant's loss of use shall be suspended or abated until the Premises are restored as provided in this Article XII.

12.3 AWARD

The Landlord and Tenant shall have the right to recover for damages to the Building and the Land and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking, as their respective interests may appear. Nothing contained herein, however, shall be construed to prevent the Tenant from prosecuting in any condemnation proceeding a claim for the value of the Tenant's trade fixtures and for relocation expenses.

ARTICLE XIII

DEFAULT

13.1 TENANT'S DEFAULT

If:

(a) the Tenant shall fail to pay the Rent or other charges on or before the date on which the same becomes due and payable and the same continues for thirty (30) days after notice from the Landlord thereof, or

(b) the Tenant shall fail to perform or observe any other term or condition contained in this Lease and the Tenant shall not cure such failure within sixty (60) days after notice from the Landlord thereof and promptly and diligently complete the curing of the same (or unless such failure is of such a nature that it cannot be cured within sixty days, in which case no default shall occur so long as Tenant shall commence the curing of the failure within such sixty-day period and shall thereafter promptly and diligently complete the curing of the same), then, and in any of such cases, the Landlord may, immediately or at any time thereafter while such failure continues, terminate this Lease by giving notice of termination to the Tenant. The Tenant covenants and agrees, notwithstanding such termination

of this Lease, to pay and be liable for, on the days originally fixed herein and for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated, but in the event the Premises or any part thereof shall be relet by the Landlord, the Tenant shall be entitled to a credit equal to the net amount of rent received by the Landlord in reletting, determined as follows:

Amounts received by the Landlord from reletting and for the remainder of what would have been the Lease Term had the Tenant fully complied with the terms of this Lease (and no other special event allowing termination had occurred) shall be credited against the Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof, if any, shall be payable by the Tenant. In the event of such termination, the Landlord agrees to use reasonable efforts to relet the Premises promptly and upon such terms as to minimize the Tenant's damages hereunder.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 WAIVER

Failure on the part of the Landlord or the Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by the Tenant or the Landlord, respectively, of any of the other's rights hereunder. Further, no waiver at any time of any of the provisions hereof by the Landlord or the Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the Landlord or the Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary the Landlord's or the Tenant's consent or approval to or of any subsequent similar act by the other.

14.2 COVENANT OF QUIET ENJOYMENT

Subject to the terms and provisions of this Lease and on payment of the Rent and compliance with all of the terms and provisions of this Lease, the Tenant shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises

during the term hereof, the foregoing covenant of quiet enjoyment is in addition to and not in lieu of the Tenant's rights of quiet enjoyment under common law.

14.3 INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

14.4 PROVISIONS BINDING, ETC.

Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Landlord and the Tenant. Each term and each provision of this Lease to be performed by the Tenant and the Landlord shall be construed to be both a covenant and a condition.

14.5 RECORDING

The Landlord and the Tenant agree to record this Lease, or to execute, acknowledge and deliver a notice of lease referencing, without limitation, Tenant's option to extend the term of this Lease in form reasonably acceptable to Tenant. Any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

14.6 NOTICES

Whenever, by the terms of this Lease, a notice shall or may be given either to the Landlord or to the Tenant, such notice shall be in writing and shall be sent by hand delivery or by registered or certified mail, return receipt requested, postage prepaid as follows:

If intended for the Landlord, addressed to the Landlord at the address set forth on the first page of this Lease with a copy to Landlord's attorneys: Richard M. Cotter, Esq., Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and, if intended for the Tenant, addressed to the Tenant at the address set forth on the first page of this Lease with a copy to Tenant's attorney: Norman P. Cohen, Esq., Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108 or to such other address or addresses as may from time to time hereafter be designated by either party by like notice.

All such notices shall be effective upon receipt or upon refusal to receive.

14.7 PARAGRAPH HEADINGS

The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

14.8 NO BROKERAGE

Each party warrants and represents to the other that each has dealt with no broker in connection with the consummation of this Lease, and, in the event of any brokerage claims against one party predicated upon prior dealings with the other party, the other party agrees to defend the same and indemnify the one party against any such claim.

14.9 WHEN LEASE BECOMES BINDING

This document shall become effective and binding only upon the execution and delivery hereof by both the Landlord and the Tenant. All negotiations, consideration, representations and understandings between the Landlord and the Tenant are incorporated herein and may be modified or altered only by written agreement between the Landlord and the Tenant, and no act or omission of any employee or agent of the Landlord shall alter, change or modify any of the provisions hereof.

14.10 STATUS REPORT; MODIFICATION

Recognizing that both parties may find it necessary to establish to third parties, such as accountants, mortgagees or the like, the then current status of performance hereunder, either party, on the request of the other made from time to time, will promptly furnish a statement of the status of any matter pertaining to this Lease. Where either party's consent or approval is required hereunder, it shall not be unreasonably withheld or delayed.

14.11 SELF-HELP

Tenant shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of moneys which may be necessary or appropriate by reason of the failure or neglect of the Landlord to perform any of the provisions of this Lease, and in the event of the exercise of such right, the Landlord agrees to pay all such sums forthwith upon demand.

14.12 HOLDING OVER

Any holding over by the Tenant after the expiration of the Lease Term shall be treated as a tenancy from month to month terminable upon sixty (60) days' notice by either Landlord or Tenant to the other and otherwise on the terms and conditions set forth in this Lease, so far as applicable.

14.13 NON-INTERFERENCE

Any action taken by the Landlord under this Lease shall be taken in a manner so as not to interfere unreasonably with the Tenant's use and occupation of the Premises.

14.14 CONSENT

Where either party's consent or approval is required hereunder, it shall not be unreasonably withheld, delayed or qualified.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed, under seal, as of the date first written above.

LANDLORD: ROY C. SMITH, AS TRUSTEE OF HIGH STREET PCRC TRUST

By_____
Roy C. Smith, not individually but as Trustee

TENANT: TOWN OF ACTON, MASSACHUSETTS

By_____
not individually but as a member of the Town of Acton Board of Selectmen

By_____
not individually but as a member of the Town of Acton Board of Selectmen

By_____
not individually but as a member of the Town of Acton Board of Selectmen

Original filed under Land Acquisition Audubon Hill

FILE COPY

ESCROW AGREEMENT

This Agreement is made as of the 23rd day of June, 1989, among ROY C. SMITH, as Trustee of the HIGH STREET PCRC TRUST u/d/t dated March 5, 1987, recorded with the Middlesex South Registry of Deeds at Book 18611, Page 409, and with the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust"), the TOWN OF ACTON, MASSACHUSETTS, a Massachusetts municipal corporation acting by and through its Board of Selectmen (the "Town") and the law firm of PALMER & DODGE ("Escrow Agent").

Reference is made to the following facts:

A. On or about the date hereof, six (6) counterpart copies of a Comprehensive Development Agreement dated June 23, 1989 by and between the Trust and the Town have been executed by the signatories thereto and delivered to the Escrow Agent to be held in escrow in accordance with the provisions hereof. Following the date hereof, Roy C. Smith, as Trustee of the Trust, shall deliver a recordable original and six copies of the Site Plan (as defined in Section 3 below) to the Escrow Agent. Such counterpart agreements and Site Plan are collectively referred to as the "Escrowed Documents"

B. It is the intention of the parties that this Agreement shall provide the terms upon which the Escrowed Documents shall be released from this escrow, following which the parties thereto shall be bound and benefited by the terms thereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree:

1. Roy C. Smith, as Trustee of the Trust, and the Town hereby designate the Escrow Agent to hold and dispose of the Escrowed Documents in accordance with the terms hereof and the Escrow Agent hereby agrees to do so.

2. Roy C. Smith, as Trustee of the Trust, hereby agrees, for the benefit of the Town as expeditiously as possible to cause the Site Plan to be prepared as provided herein and delivered to the Escrow Agent.

3. Roy C. Smith, as Trustee of the Trust, shall cause a recordable plan (the "Site Plan") based upon a certain plan entitled "Audubon Hill, Acton, Mass.", dated August 1st, 1988, for land owned by High Street PCRC Trust drawn by Acton Survey & Engineering, Inc. (the "Plan") to be delivered to the Town, and shall thereupon sign and send the Release Notice to the Escrow Agent, all within fourteen (14) days of the date hereof. The Site Plan shall be in recordable form,

shall be consistent with the Plan, shall show the boundaries of (i) the Development Property, (ii) the Option A Property, (iii) the Option B Property, (iv) the Access Easement, and (v) the Area subject to the Conservation Restriction, as each of the preceding terms are defined in the Comprehensive Development Agreement between Roy C. Smith, as Trustee of the Trust, and the Town dated as of June 23, 1989. Within seven (7) days of delivery of the Site Plan, the Town Manager of the Town of Acton, or his designee, and Town Counsel, shall determine whether the Site Plan is consistent with the requirements of this Agreement. In the event that the Site Plan is found to be consistent with the provisions hereof, the Town Manager, acting under the authority of the Town Board of Selectmen granted pursuant to this Agreement shall sign the Release Notice and deliver such Release Notice to the Escrow Agent. In the event that the Site Plan is found to be inconsistent with the provisions hereof, the Town Manager shall so notify Roy C. Smith, stating the reasons therefor and Roy C. Smith shall have the opportunity to submit a revised Site Plan to the Town Manager for approval, as provided above.

4. If, on or before July 17, 1989 (the "Release Date"), the Escrow Agent shall have received one or more counterparts of a notice in the form attached hereto as Exhibit A (the "Release Notice") purporting to be executed on behalf of the Trust and the Town, then the Escrow Agent shall release the Escrowed Documents from escrow, and deliver counterpart copies of the remaining Escrowed Documents to each of the parties thereto. Upon release of the Escrowed Documents from escrow and delivery thereof to each of the parties thereto as provided in the immediately proceeding sentence of this paragraph, this Agreement shall terminate and the parties shall thereafter be bound in accordance with the provisions of the Escrowed Documents.

If the Escrow Agent shall not receive the Release Notice by the Release Date, then the Escrow Agent shall destroy all Escrowed Documents held by the Escrow Agent and promptly notify the parties of such destruction, following which this Agreement shall terminate and neither party hereto shall have further recourse hereunder to the other.

5. Roy C. Smith hereby agrees to sign the Release Notice and to deliver such notice to the Escrow Agent on satisfaction of the escrow conditions specified in Sections 2 and 3 of this Agreement. The Town Manager, acting for the Town, agrees to notify Roy C. Smith, as Trustee of the Trust, promptly after fulfillment of the escrow conditions specified in such Section 3.

6. The Town Manager, acting for the Town, hereby agrees to sign the Release Notice and to deliver such notice to the Escrow Agent upon satisfaction of the escrow conditions

specified in Section 3 of this Agreement. Roy C. Smith, as Trustee of the Trust, agrees to notify the Town Manager, acting for the Town, promptly after fulfillment of the escrow conditions specified in Section 2.

7. Any instruction, notice or other communication given hereunder shall be effective if in writing and given by registered or certified mail, return receipt requested, or delivered in hand to the party entitled to receive the same, to these addresses:

(a) If to Roy C. Smith, as Trustee of the Trust:

292 Great Road
Acton, Massachusetts 01720

(b) If to the town:

Acton Town Hall
Acton, Massachusetts 01720
Attn: Town Manager

(c) If to the Escrow Agent:

Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108
Attn: David Y. Bannard, Esquire

or to such other address or addresses as the party to receive such instruction, notice or other communication shall from time to time designate by like notice to all of the other parties. Any instruction, notice or other communication shall be effective only upon receipt.

8. The party designated below as Escrow Agent hereby accepts such designation. The Escrow Agent shall be obligated to perform only such duties as are specifically set forth in this Agreement and shall not be liable for any action taken, omitted or suffered by the Escrow Agent in good faith and believed by the Escrow Agent to be authorized or within the discretion or right or powers conferred upon the Escrow Agent by this Agreement and may conclusively rely and shall be protected in acting or refraining from acting in reliance upon an order, an opinion of counsel, or upon any certificate, request or other document believed by the Escrow Agent to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be bound by any modifications of this Agreement unless such modification is in writing and signed by all of the parties hereto. If a controversy arises between one or more of the parties hereto, or between any of the parties hereto and any person not a party hereto as to whether or not or to whom the Escrow Agent shall deliver all or any portion of the Escrowed

Documents, or in the event that the Escrow Agent shall be uncertain as to the Escrow Agent's duties or rights hereunder or shall receive instructions with respect to the Escrowed Documents which in the Escrow Agent's opinion are in conflict with any of the provisions of this Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep safely the Escrowed Documents until the Escrow Agent shall have been directed otherwise by (a) a writing signed by Roy C. Smith, as Trustee of the Trust, and the Town or (b) a final order of a court of competent jurisdiction over the dispute. The Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of Roy C. Smith, as Trustee of the Trust, or the Town to honor any of the provisions of the Escrowed Documents. The Escrow Agent shall incur no liability hereunder whatsoever except in the event of willful misconduct or gross negligence as long as the Escrow Agent has acted in good faith and the parties hereto shall indemnify the Escrow Agent against all liability hereunder except for that occasioned by the Escrow Agent's willful misconduct or gross negligence.

9. The Escrow Agent may resign at any time upon not less than fifteen (15) days' prior written notice to Roy C. Smith, as Trustee of the Trust, and the Town, provided that a successor Escrow Agent shall have been appointed prior to the effective date of such resignation. If a successor Escrow Agent shall not have been appointed by Roy C. Smith, as Trustee of the Trust, and the Town within ten (10) days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent. Every successor Escrow Agent appointed hereunder shall execute and deliver to Roy C. Smith, as Trustee of the Trust, and the Town and the resigning Escrow Agent an instrument accepting such appointment, and thereupon such resignation shall become effective and the successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the resigning Escrow Agent; but on request of Roy C. Smith, as Trustee of the Trust, and the Town or the successor Escrow Agent, such resigning Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent all the rights and powers of the resigning Escrow Agent, and shall duly transfer and deliver to such successor Escrow Agent all of the Escrowed Documents held by such resigning Escrow Agent hereunder.

10. The Agreement shall bind and inure to the benefit of the parties, their successors and assigns and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

EXECUTED under seal as of the date first written above.

The Trust: HIGH STREET PCRC TRUST

By: _____
Roy C. Smith, as Trustee

The Town: THE TOWN OF ACTON, MASSACHUSETTS
Acting by a majority of its Board of Selectmen

_____

_____

_____

_____

_____

Escrow Agent: PALMER & DODGE

By: _____
partner

EXHIBIT A

RELEASE NOTICE

To: Palmer & Dodge

The undersigned, being parties to an Escrow Agreement dated as of _____, hereby advise you (in your capacity as Escrow Agent under such Escrow Agreement) that the conditions referred to in such Escrow Agreement to be satisfied for their benefit have been so satisfied (or, if not satisfied, may be treated by you as waived on behalf of the party entitled to the benefit thereof) and you are hereby instructed to deliver the Escrow Documents out of escrow.

High Street PCRC Trust

By: _____
Roy C. Smith, as Trustee

Town of Acton

By: _____
Town Manager, acting under authority granted by the Town of Acton Board of Selectmen

AGENDA
SELECTMEN'S MEETING
JUNE 23, 1989
7:30 A.M.

The Board of Selectmen will hold a meeting on Friday, June 23, 1989 at 7:30 A.M. in Room 204 to vote on the following issues:

(Betty McManus will be in at 7:25 with Section 8 Certificates which require the Board's signatures.)

COMPREHENSIVE DEVELOPMENT AGREEMENT - AUDUBON HILL

SITE PLAN #4/18/89-313 - CONDOTECH TRUST DECISION

REQUEST FOR BON FIRE - SOMERVILLE LUMBER

Selectman Weeks has requested an Executive Session

EXECUTIVE SESSION

AUDUBON HILL

40 YR. PURCH./REPURCH. LIMITS (AFFORDABILITY)
SENIOR CTR & PROTECT - BOND
TOWN DESIGNEE
P. 17!

SHORT FORM AGREEMENT FROM 1987.
REQUIRES NET INCOME RESTRICTIONS

BOB GRSI ←→ 23RD
DAVID BANNARD
TOM SCHNOR

ATTYS @ PALMER & DODGE
WORKING ON COMPREHENSIVE DEVELOPMENT AGREEMENT

ROY SMITH 263-0011
MTG. ON WED. RE TITLE INS. (PM?)
2-5

4 @ $10,000

THURS AM DICK COTTER
264-4770
AND

BOB ORSSI
DAVID BANNARD
TOM SCHNOR

ROLAND/DOUG
CONDO AGREEMENT / DEED RESTRICTIONS?

RSM

R. SMITH MANAGEMENT CORP.

292 GREAT ROAD • ACTON, MASSACHUSETTS 01720 • TEL. (508) 263-3115

June 30, 1989

David Y. Bannard, Esquire
Palmer & Dodge
One Beacon Street
Boston, MA 02108

Re: High Street PCRC Trust

Dear Dave,

As you had discussed with Dick Cotter on June 28, 1989, I am requesting an extension on the date for delivering of plans as provided in Paragraph 3 of the Escrow Agreement by and between the Town of Acton and High Street PCRC Trust, dated June 23, 1989. After my discussion and Dick Cotter's discussion with Jack Dunphy of Acton Survey & Engineering, the time that it will take to down-size the High Street PCRC Trust plans from 1" = 60' to 1"=40' and the printing of the plans for recording will not permit the plans to be delivered by July 7, 1989 as the Escrow Agrement requires.

This letter is a request to extend the time for delivering the plans in Paragraph 3 of the Escrow Agreement from fourteen (14) days to twenty one (21) days so that the plans will now be delivered on or before July 14, 1989. The date of July 17, 1989 in Paragraph 4 of the Escrow Agreement would be changed to July 24, 1989.

If the Town is in agreement with this request, please have the duplicate copy of this letter signed by or on behalf of the Town. The signed duplicate letter should be returned to me as soon as possible.

Please call Dick Cotter (1-508-264-4770) if you have any questions or if there is any problem with my request.

Very truly yours,

Roy C. Smith

cc: Richard M. Cotter, Esq.
Stanley L. Gordon, Esq.
Acton Survey & Engineering, Inc.

RSM

R. SMITH MANAGEMENT CORP.

292 GREAT ROAD • ACTON, MASSACHUSETTS 01720 • TEL. (508) 263-3115

June 12, 1989

Planning Board
Town of Acton
Acton, MA 01720

Re: Construction Schedule
Audubon Hill / High Street PCRC Trust

Dear Board Members:

The chronological schedule of events is as follows:

1) Clear and grub Audubon Drive, Brewster Lane and the Emergency Access Drive. All stumps and brush will be chipped and used on site.

2) Clear and grub all house sites, both North and South Phases, and stake the house locations. Excess mulch will be spread in the North Phase lot locations for stabilization and decomposition.

3) Cut and fill Audubon Drive, Brewster Lane, Emergency Access Drive and the drive to the Proposed Elderly Center.

4) Put in utilities and subgrade the road and drive system.

5) Concurrent with item 4, start foundations in units on Brewster Lane, starting with 34, 36, 38, 40, 42, 44, 46, 48; then going to clusters with units 26, 28, 30, 32; units 18, 20, 22, 24; units 25, 27, 29, 31; units 17, 19, 21, 23; units 9, 11, 13, 15; units 1, 3, 5, 7; units 10, 12, 14, 16; units 2, 4, 6, 8; and the foundation for the Recreation Center which will serve as an on site sales office.

6) Concurrent with item 5, base pave Audubon Drive and Brewster Lane.

7) As soon as Fire Marshall approval is received, start frame construction of units in the same order as the foundations, per item 5.

8) When the Southern Phase has been completed, the foundations for the Northern Phase and the Elderly Center will proceed as follows: Elderly Center foundation; units 101, 103, 105, 107, 109, 111; units 121, 123, 125, 127; units 126, 128, 130, 132; units 118, 120, 122, 124; units 110, 112, 114, 116; and units 102, 104, 106, 108.

9) When all the foundations have been pured and back filled, the Emergency Access Drive will be poured (binder). paved

10) Construction of the Conservation Park area and trail system will finish concurrent with the completion of the units on Brewster lane. The proposed stump dump will not be required, although any excess mulch will be stored there for later use on the trails, if desired by the Conservation Board.

11) The construction of the North units and the Elderly Center will be in conjunction with each other and in line with the foundation schedule.

12) When construction and landscaping are complete on Brewster Lane, the final coat of paving will be placed on Audubon Drive up to the intersection of the Emergency Access Drive. Throughout the construction phase, primary access for construction vehicles will be through the Access Drive unless materials are coming from the Maynard/Concord end of High Street.

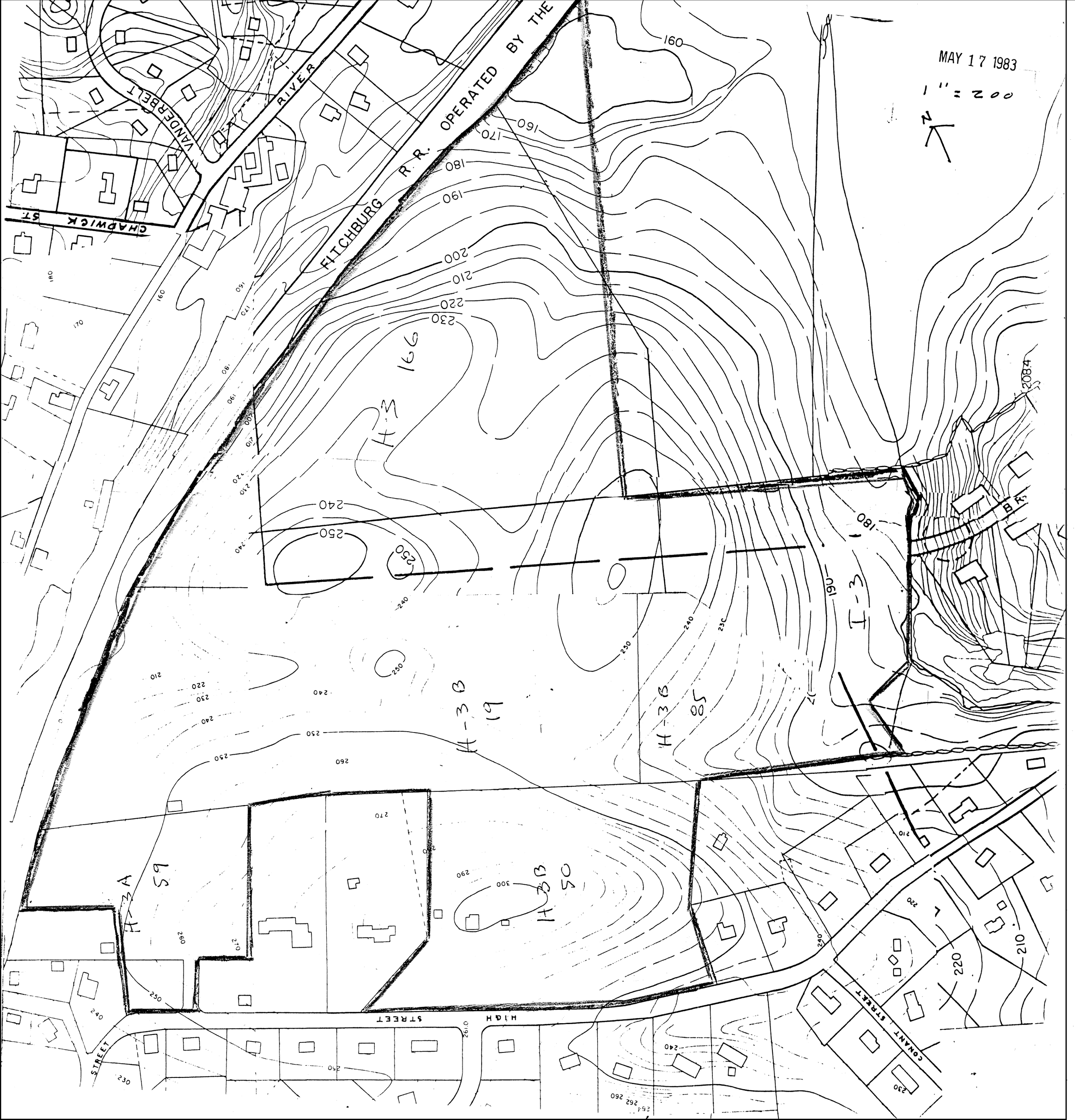
13) When all construction has been completed, the Access Drive will be completed with the landscaping and the entrance cleaned up and the gate secured.

The total project is programmed for eighteen (18) months; I would expect to complete the Elderly Center in the Fall of 1990, assuming a reasonable market.

Yours truly,

Roy C. Smith

Roy C. Smith


MAY 17 1983
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N
FITCHBURG R.R. OPERATED BY THE
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CHADWICK ST.
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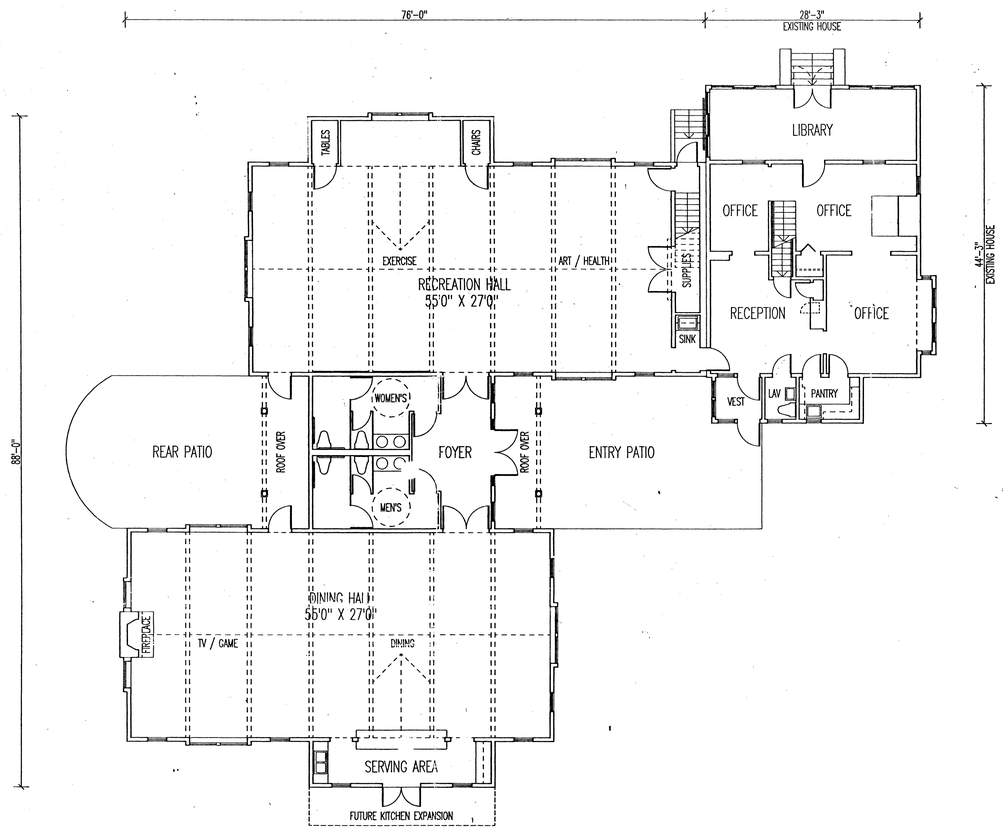
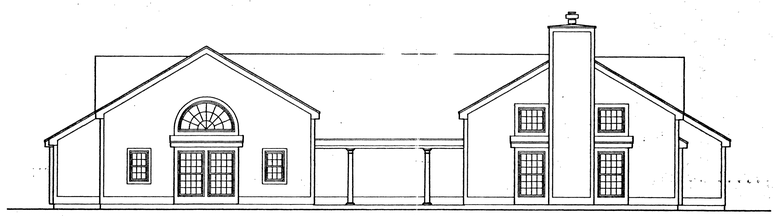
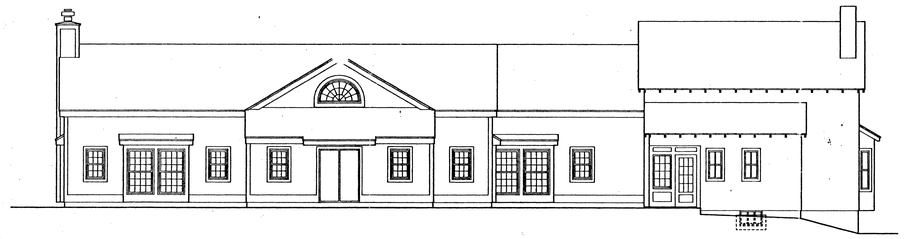


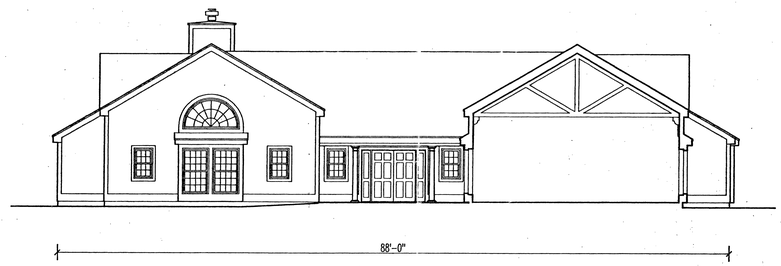
FIRST FLOOR PLAN



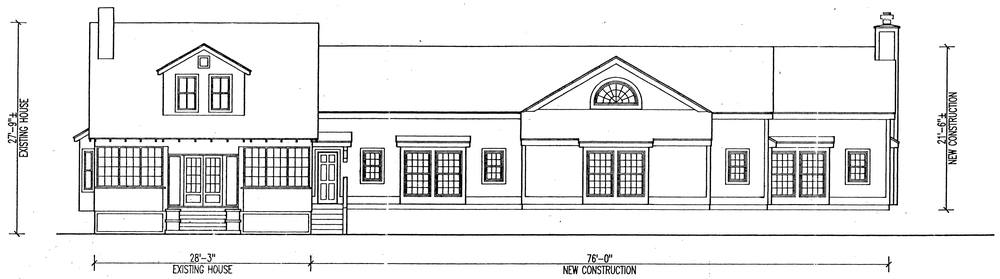
SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION – SECTION THRU RECREATION HALL



WEST ELEVATION

EXTERIOR MATERIALS

ROOF	ASPHALT SHINGLES
	PAINTED WOOD RAKE AND FASCIA TRIM
	WHITE ALUMINUM GUTTERS AND DOWNSPOUTS
SIDING	STAINED WOOD CLAPBOARDS
	PAINTED WOOD CORNERBOARDS
	PAINTED WOOD SKIRTBOARD
	PAINTED WOOD WINDOW AND DOOR TRIM
	STAINED WOOD SHINGLES (EXISTING HOUSE)
WINDOWS	CLAD WOOD WINDOWS – INSUL GLASS
DOORS	PAINTED INSULATED METAL ENTRY DOORS
	CLAD WOOD SLIDING DOORS – INSUL GLASS
FOUNDATIONS	POURED CONCRETE

NOTES:

© COPYRIGHT BY GAUCHAT ARCHITECTS, INC.: Possession and use of the material contained in these drawings is granted only in connection with construction and/or sale of the structure depicted herein. Any use, reproduction or disclosure of any information contained herein, without the written permission of Gauchat Architects, Inc. is expressly prohibited.

ACTON PLANNING BOARD
(SPECIAL PERMIT GRANTING AUTHORITY)

THE SPECIAL PERMIT FOR A PLANNED CONSERVATION RESIDENTIAL COMMUNITY UNDER SECTION 9 OF THE TOWN OF ACTON ZONING BYLAW IS HEREBY APPROVED.

DATE: _____

FLOOR PLAN AND ELEVATIONS
OF
ELDERLY CENTER

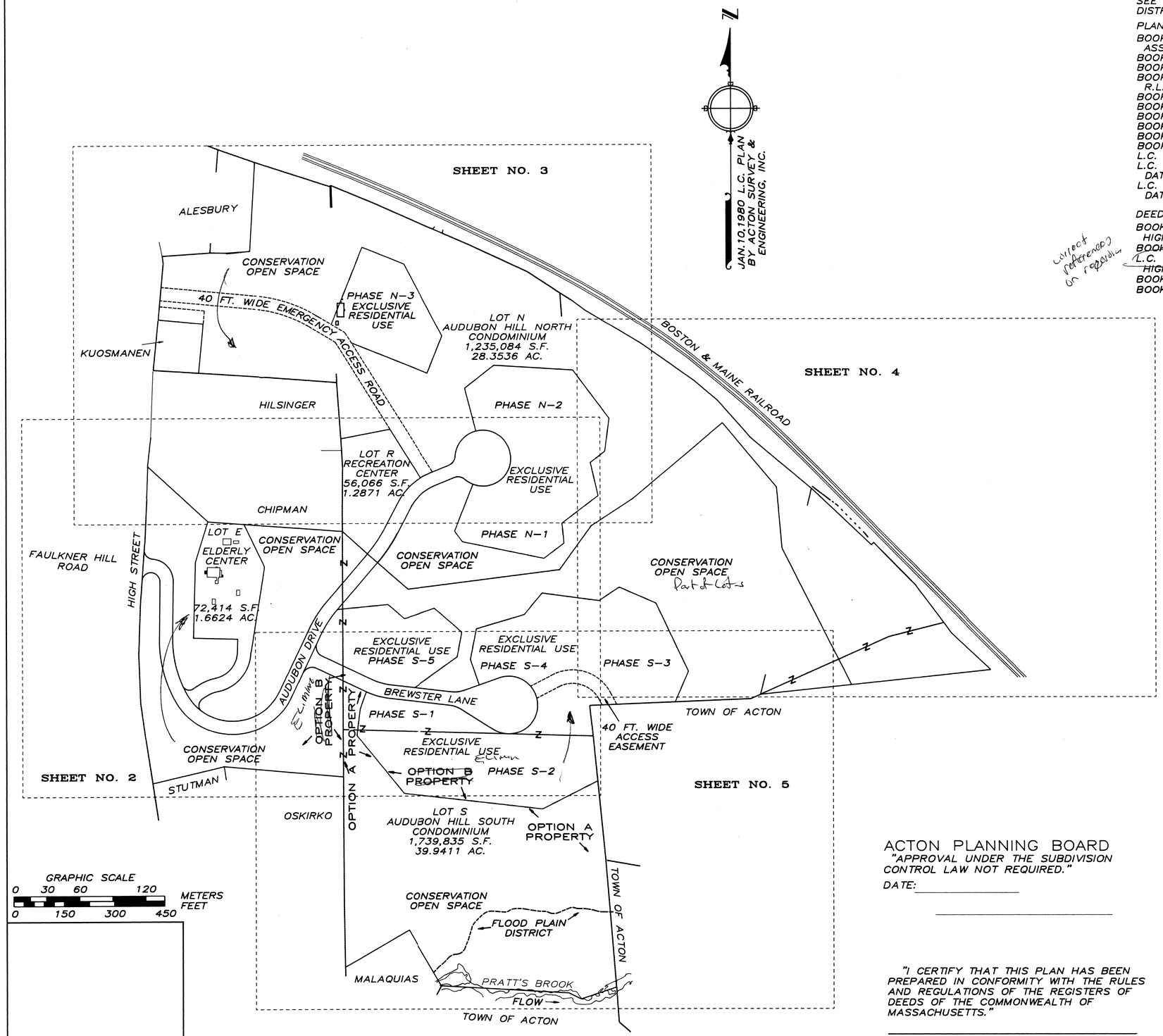
AUDUBON HILL

ACTON, MASSACHUSETTS

PREPARED BY:
GAUCHAT ARCHITECTS, INC.
1348 CAMBRIDGE STREET
CAMBRIDGE, MA 02139

DATE: JULY 27, 1988

SCALE IN FEET
01 8 16 24



SEE THE FOLLOWING PLANS, DEEDS, AND DOCUMENTS RECORDED AT MIDDLESEX SOUTH DISTRICT REGISTRY OF DEEDS.

PLAN REFERENCES:

BOOK 5396 PAGE 544 ~ PLAN BY BOSTON AND MAINE RAILROAD, W.F. CUMMINGS, ASST. CHIEF ENGR., DATED APRIL 1929.
BOOK 7017 PAGE 5 ~ PLAN BY MERRILL A. BROWN, R.L.S., DATED JUNE 24, 1946.
BOOK 9495 PAGE END ~ PLAN BY HORACE F. TUTTLE, C.E., DATED OCT. 30, 1952.
BOOK 9692 PAGE END ~ PLAN BY YALE SHAPIRO & JAMES G. NOONAN, R.P.C.E. & R.L.S., DATED MARCH 5, 1960.
BOOK 11113 PAGE 438 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED SEPT. 7, 1971.
BOOK 11657 PAGE 242 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED DEC. 28, 1966.
BOOK 10279 PAGE 57 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED SEPT. 7, 1971.
BOOK 12549 PAGE 595 ~ PLAN BY ACTON SURVEY & ENGINEERING, INC., DATED JAN. 10, 1980.
BOOK 13948 PAGE 187 ~ PLAN BY ACTON SURVEY & ENGINEERING, INC., DATE JAN. 10, 1982.
BOOK 14765 PAGE 132 ~ PLAN BY JOHN R. SNELLING, R.L.S., DATED SEPT. 24, 1982.
L.C. BOOK 794 PAGE 41 ~ PLAN BY CHARLES A. PERKINS CO., INC., SURV., DATED APRIL 1970.
L.C. BOOK 954 PAGE 121 ~ PLAN BY JOHN R. SNELLING ASSOCIATES, SURV., DATED JAN. 30, 1982.
L.C. BOOK 963 PAGE 183 ~ PLAN BY JOHN R. SNELLING ASSOCIATED, SURV., DATED NOV. 15, 1982.

DEED AND DOCUMENT REFERENCES:

BOOK 18611 PAGE 437 ~ NORMAN R. VEENSTRA TO ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST.
~~BOOK 18611 PAGE~~ 445 ~ ROY C. SMITH TO ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST.
L.C. BOOK 1036 PAGE 179 ~ NORMAN R. VEENSTRA TO ROY C. SMITH, TRUSTEE, ~~HIGH STREET~~ PCRC TRUST.
BOOK 19722 PAGE 505 ~ ORDER OF CONDITIONS ~ AUDUBON HILL.
BOOK 19722 PAGE 511 ~ PLANNED CONSERVATION RESIDENTIAL COMMUNITY SPECIAL PREMIT.

correct references on regards

Add Land Court

THE LOCUS SITE CONTAINS 71.2442 ACRES AND CONSISTS OF THE FOLLOWING LOTS.

LOT E ..... 1.6624 AC.
LOT N ..... 28.3536 AC.
LOT R ..... 1.2871 AC.
LOT S ..... 39.9411 AC.
72.2442 ACRES

THE SITE WAS ISSUED A "SPECIAL PERMIT" AS A PLANNED CONSERVATION RESIDENTIAL COMMUNITY BY THE ACTON PLANNING BOARD ON MARCH 4, 1989. (SEE BOOK 19722 PAGE 511) Land Court special Perm

NOTES:

THE FOLLOWING NOTES REFER TO A COMPREHENSIVE DEVELOPMENT AGREEMENT BETWEEN ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST AND THE TOWN OF ACTON, TO BE RECORDED HEREWITH. Date June 23

THE OPTION A PROPERTY REFERED TO IN THE ABOVE AGREEMENT IS SHOWN ON SHEET NO. 5 OF 5. THE OPTION B PROPERTY IS THE BALANCE OF THE LOCUS SITE.

THE LAND SUBJECT TO THE CONSERVATION RESTRICTION REFERED TO IN THE ABOVE AGREEMENT IS LOT N EXCLUDING PHASE N-1, N-2, AND N-3; AND LOT S EXCLUDING PHASE S-1, S-2, S-3, S-4, AND S-5.

Lot N & S do not include roads

ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."

DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158

DATE: _____

change of Title plan of development

THE SITE PLAN OF
AUDUBON HILL
IN
ACTON - MASS.
PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 150 FEET change of date JUNE 30, 1989
ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.

RECEIVED JUL 13 1989

INDEX SHEET
SHEET NO. 1 OF 5
FILE NO. 1903

JAN.10,1980 L.C. PLAN
BY ACTON SURVEY &
ENGINEERING, INC.

SEE SHEET NO. 3
MATCH LINE

ROBERT A. & NANCY L. HILSINGER BK. 12078-536

WILLIAM L. & OLIVE H. CHIPMAN BK. 7017-64 BK. 11113-438

LOT R RECREATION CENTER 56,066± S.F. 1.2871± ACRES

AUDUBON DRIVE 40 FT. WIDE

PHASE N-2

EXCLUSIVE RESIDENTIAL USE 177,795 S.F.

LOT N AUDUBON HILL NORTH CONDOMINIUM 1,235,084± S.F. 28.3536± ACRES

PHASE N-1

CONSERVATION OPEN SPACE

HIGH STREET PUBLIC WAY ~ NO LAYOUT

FAULKNER HILL ROAD

EXISTING GARAGE

EXISTING DWELLING #52 HIGH STREET

EXISTING SHED

LOT E ELDERLY CENTER 72,414± S.F. 1.6624± ACRES

LOT S

LOT S AUDUBON HILL SOUTH CONDOMINIUM 1,739,835± S.F. 39.9411± ACRES

PHASE S-5 EXCLUSIVE RESIDENTIAL USE 76,162 S.F.

PHASE S-4

EXCLUSIVE RESIDENTIAL USE 341,529 S.F.

PHASE S-3

MATCH LINE SEE SHEET NO. 5

MATCH LINE SEE SHEET NO. 4

BREWSTER LANE 40 FT. WIDE

PHASE S-1 EXCLUSIVE RESIDENTIAL USE 341,529 S.F.

40 FT. WIDE ACCESS EASEMENT

OPTION A PROPERTY

OPTION B PROPERTY

ELLIS G. & IRIS Y. STUTMAN BK. 11657-242

VICTOR, JR. OSKIRKO BK. 12079-53

D.H. FOUND

D.H. SET

ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158

DATE: _____

GRAPHIC SCALE
0 10 20 40 METERS
0 50 100 150 FEET

THE SITE PLAN OF AUDUBON HILL IN ACTON - MASS.

PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

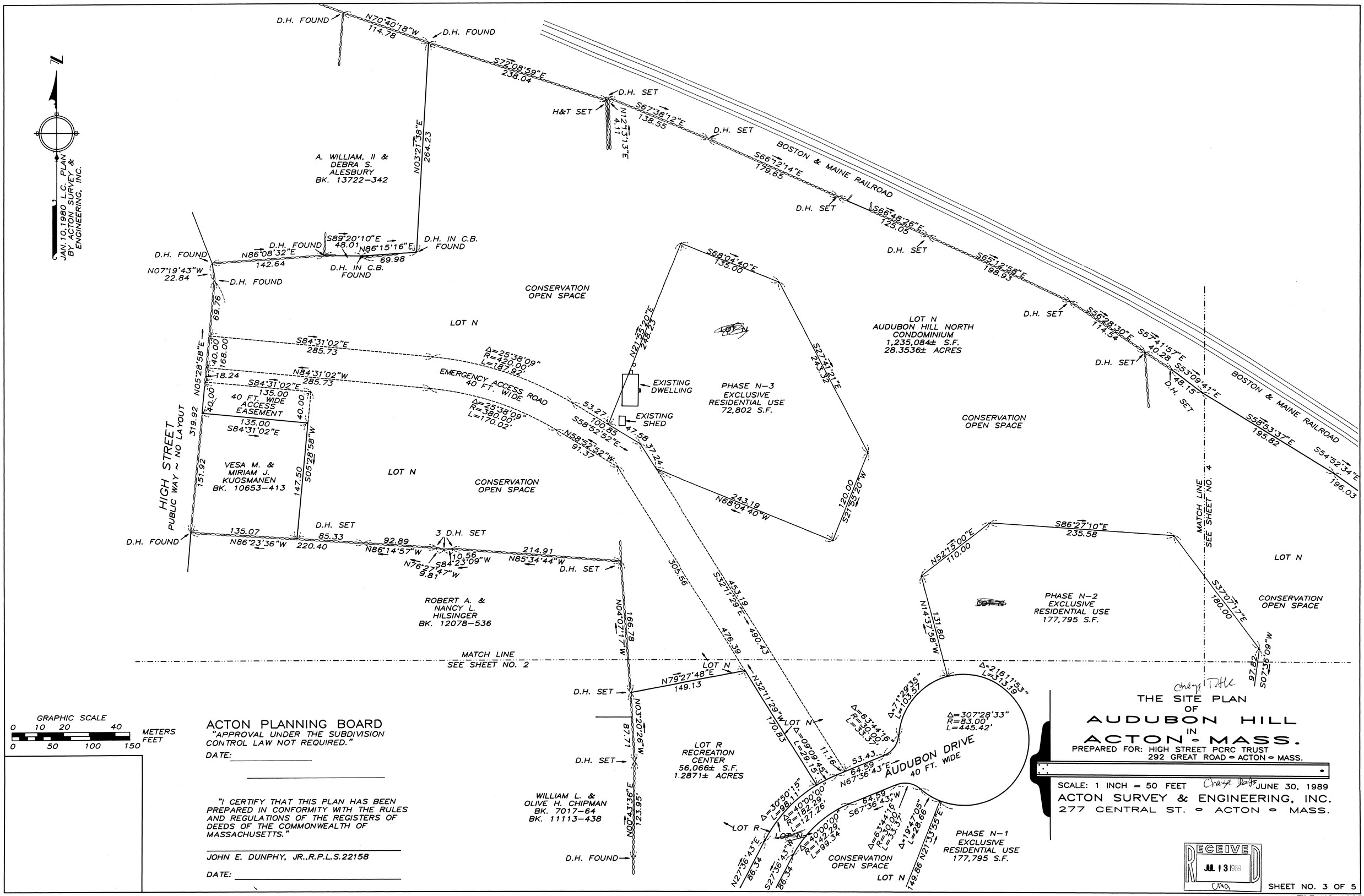
SCALE: 1 INCH = 50 FEET JUNE 30, 1989

ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.

RECEIVED JUL 13 1989

SHEET NO. 2 OF 5

FILE NO. 1903



ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158

DATE: _____

THE SITE PLAN OF AUDUBON HILL IN ACTON - MASS.

PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

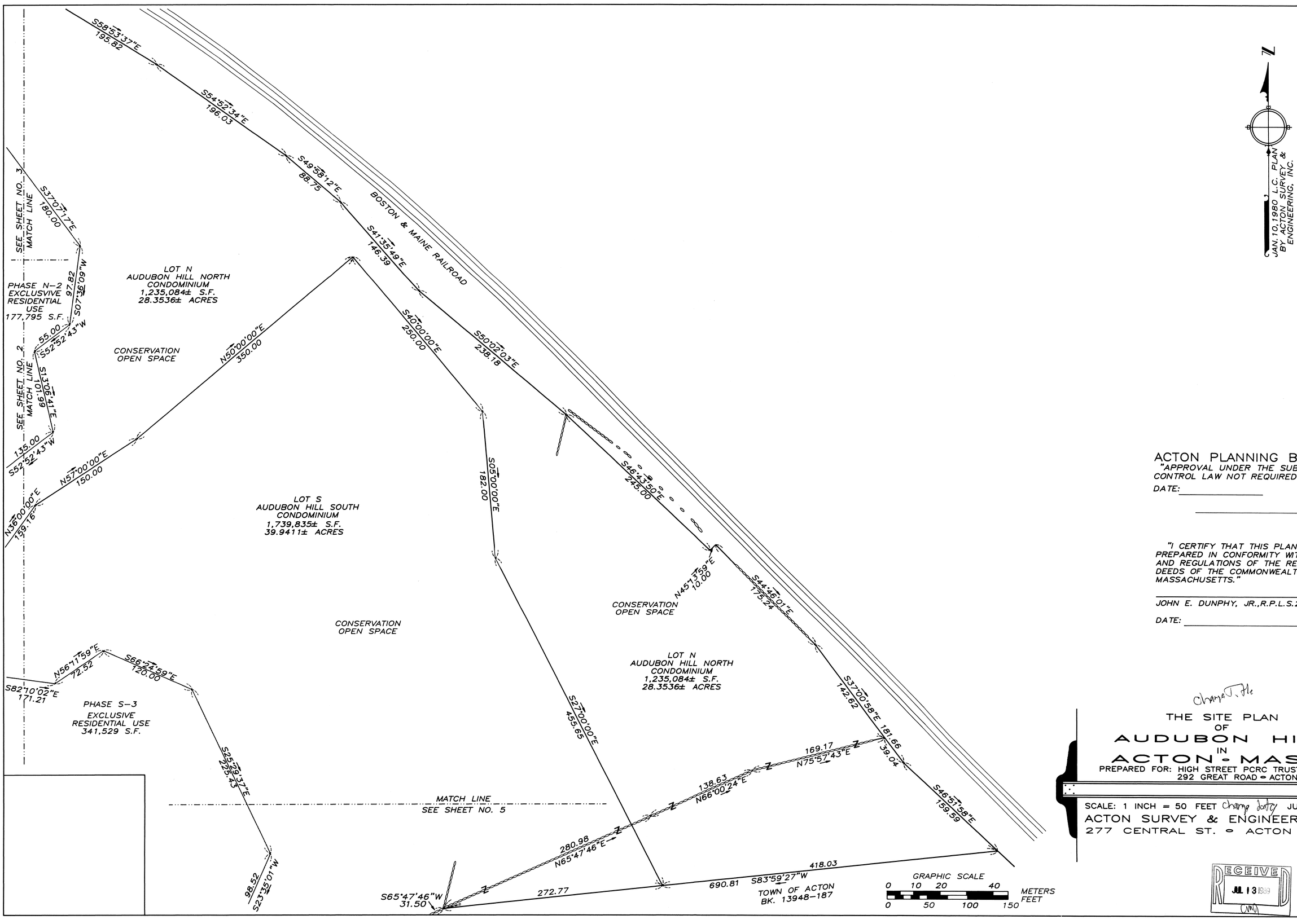
SCALE: 1 INCH = 50 FEET JUNE 30, 1989

ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.

RECEIVED JUL 13 1989

SHEET NO. 3 OF 5

FILE NO. 1903



ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
DATE: _____

_____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

_____
JOHN E. DUNPHY, JR., R.P.L.S. 22158

DATE: _____

Charles J. Fitz

THE SITE PLAN
OF
AUDUBON HILL
IN
ACTON - MASS.

PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

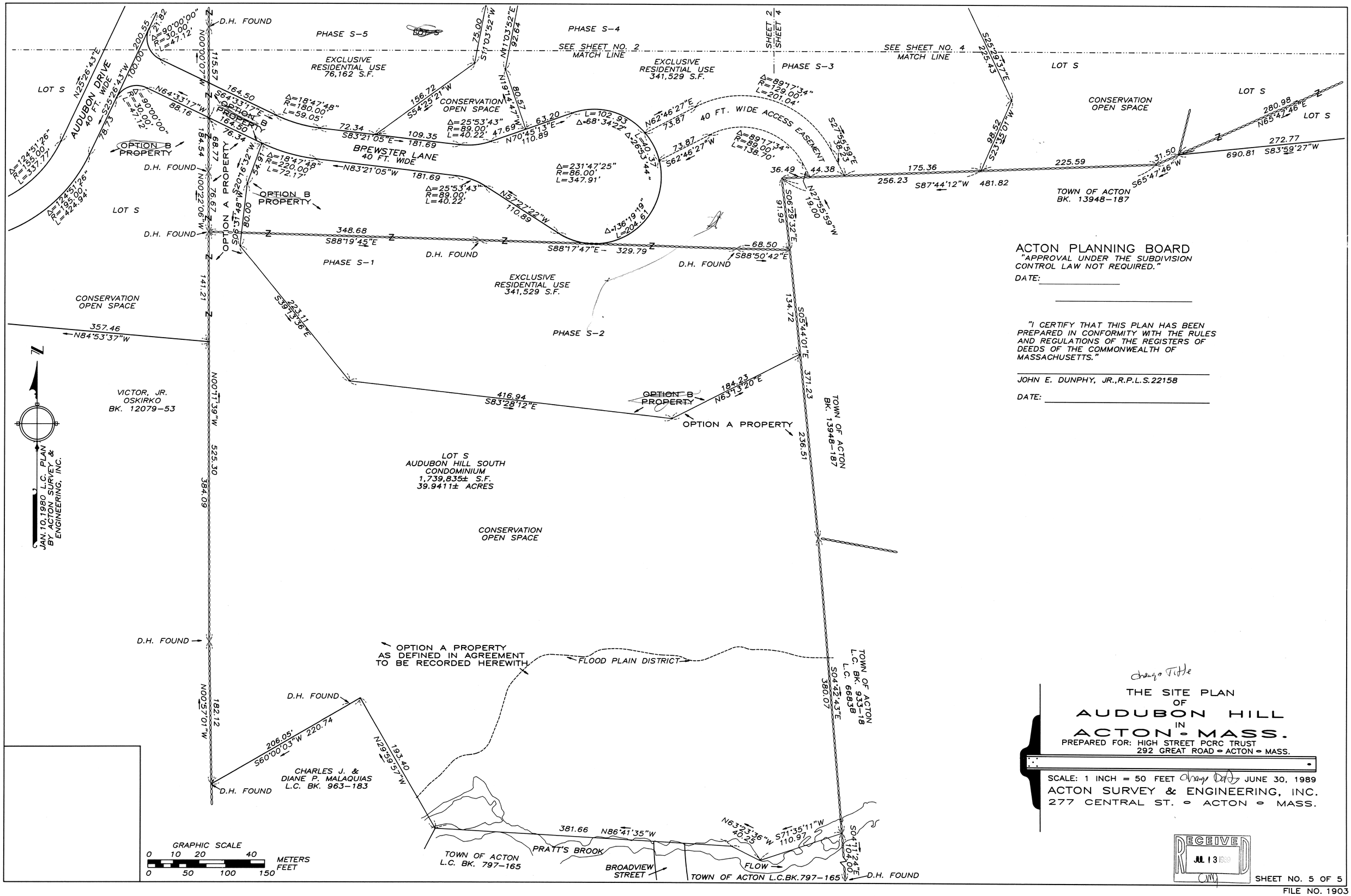
SCALE: 1 INCH = 50 FEET Charles Dotty JUNE 30, 1989

ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.

RECEIVED JUL 13 1989

SHEET NO. 4 OF 5

FILE NO. 1903



ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158

DATE: _____

Change Title

THE SITE PLAN OF
AUDUBON HILL
IN
ACTON - MASS.

PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 50 FEET Change Date JUNE 30, 1989

ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.

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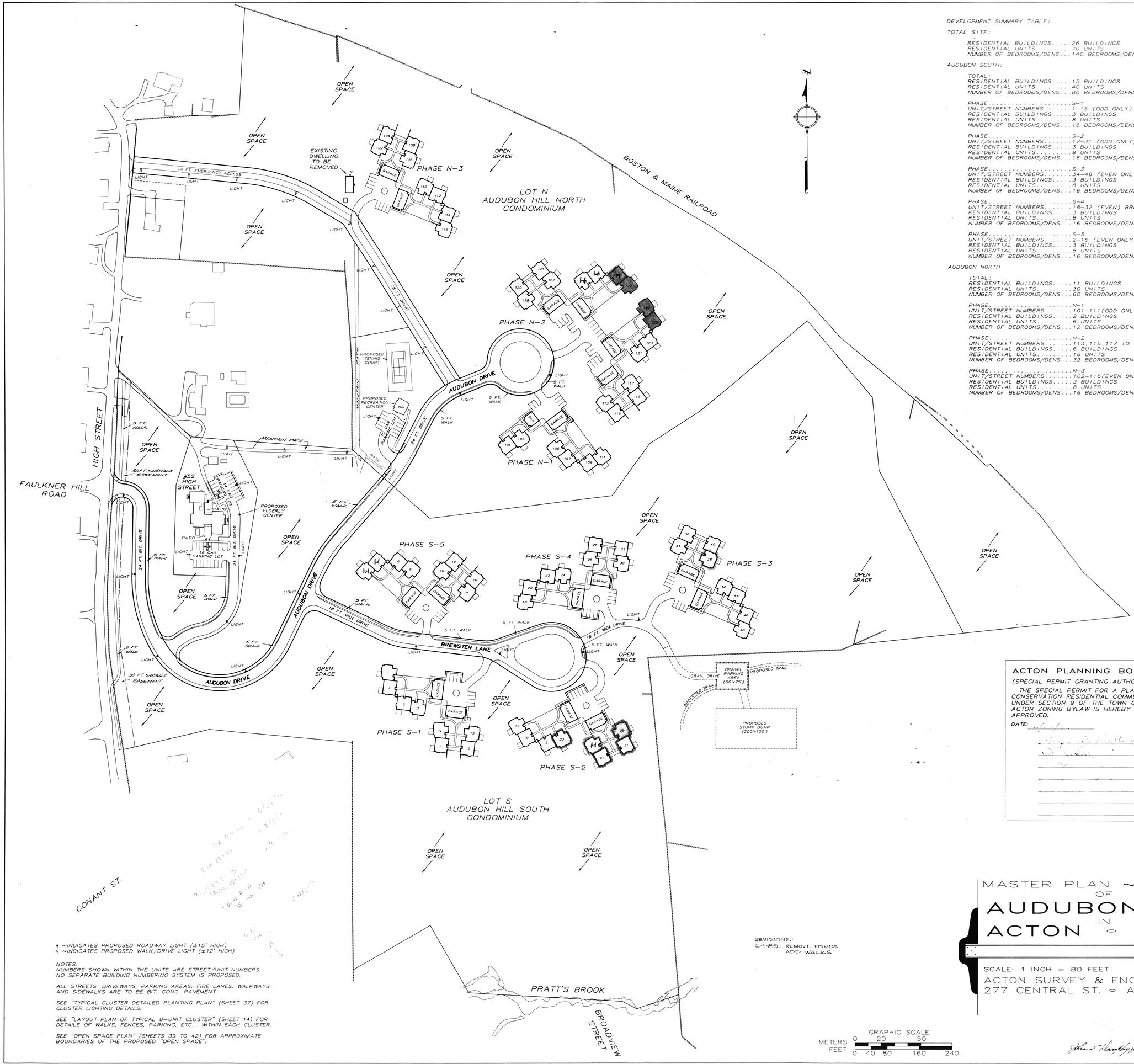
SHEET NO. 5 OF 5

FILE NO. 1903



DEVELOPMENT SUMMARY TABLE:

TOTAL SITE:

RESIDENTIAL BUILDINGS.....26 BUILDINGS
RESIDENTIAL UNITS.....70 UNITS
NUMBER OF BEDROOMS/DENS...140 BEDROOMS/DENS

AUDUBON SOUTH:

TOTAL:
RESIDENTIAL BUILDINGS.....15 BUILDINGS
RESIDENTIAL UNITS.....40 UNITS
NUMBER OF BEDROOMS/DENS...80 BEDROOMS/DENS

PHASE.....S-1
UNIT/STREET NUMBERS.....1-15 (ODD ONLY) BREWSTER LANE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

PHASE.....S-2
UNIT/STREET NUMBERS.....17-31 (ODD ONLY) BREWSTER LANE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

PHASE.....S-3
UNIT/STREET NUMBERS.....34-48 (EVEN ONLY) BREWSTER LANE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

PHASE.....S-4
UNIT/STREET NUMBERS.....18-32 (EVEN) BREWSTER LANE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

PHASE.....S-5
UNIT/STREET NUMBERS.....2-16 (EVEN ONLY) BREWSTER LANE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

AUDUBON NORTH

TOTAL:
RESIDENTIAL BUILDINGS.....11 BUILDINGS
RESIDENTIAL UNITS.....30 UNITS
NUMBER OF BEDROOMS/DENS...60 BEDROOMS/DENS

PHASE.....N-1
UNIT/STREET NUMBERS.....101-111(ODD ONLY) AUDUBON DRIVE
RESIDENTIAL BUILDINGS.....2 BUILDINGS
RESIDENTIAL UNITS.....6 UNITS
NUMBER OF BEDROOMS/DENS...12 BEDROOMS/DENS

PHASE.....N-2
UNIT/STREET NUMBERS.....113,115,117 TO 128,130 &132 AUDUBON DRIVE
RESIDENTIAL BUILDINGS.....6 BUILDINGS
RESIDENTIAL UNITS.....16 UNITS
NUMBER OF BEDROOMS/DENS...32 BEDROOMS/DENS

PHASE.....N-3
UNIT/STREET NUMBERS.....102-116(EVEN ONLY) AUDUBON DRIVE
RESIDENTIAL BUILDINGS.....3 BUILDINGS
RESIDENTIAL UNITS.....8 UNITS
NUMBER OF BEDROOMS/DENS...16 BEDROOMS/DENS

ACTON PLANNING BOARD

(SPECIAL PERMIT GRANTING AUTHORITY)

THE SPECIAL PERMIT FOR A PLANNED CONSERVATION RESIDENTIAL COMMUNITY UNDER SECTION 9 OF THE TOWN OF ACTON ZONING BYLAW IS HEREBY APPROVED.

DATE: _____

~INDICATES PROPOSED ROADWAY LIGHT (±15' HIGH)
~INDICATES PROPOSED WALK/DRIVE LIGHT (±12' HIGH)

NOTES:
NUMBERS SHOWN WITHIN THE UNITS ARE STREET/UNIT NUMBERS. NO SEPARATE BUILDING NUMBERING SYSTEM IS PROPOSED.

ALL STREETS, DRIVEWAYS, PARKING AREAS, FIRE LANES, WALKWAYS, AND SIDEWALKS ARE TO BE BIT. CONC. PAVEMENT.

SEE "TYPICAL CLUSTER DETAILED PLANTING PLAN" (SHEET 37) FOR CLUSTER LIGHTING DETAILS.

SEE "LAYOUT PLAN OF TYPICAL 8-UNIT CLUSTER" (SHEET 14) FOR DETAILS OF WALKS, FENCES, PARKING, ETC... WITHIN EACH CLUSTER.

SEE "OPEN SPACE PLAN" (SHEETS 39 TO 42) FOR APPROXIMATE BOUNDARIES OF THE PROPOSED "OPEN SPACE".

REVISIONS:
6-1-89... REMOVE PONDS
ADD WALKS

GRAPHIC SCALE
METERS 0 20 50
FEET 0 40 80 160 240

MASTER PLAN ~ SHEET 2 OF AUDUBON HILL IN ACTON ∘ MASS.

SCALE: 1 INCH = 80 FEET AUGUST 1, 1988

ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. ∘ ACTON ∘ MASS.

REVISED JUNE 1, 1989