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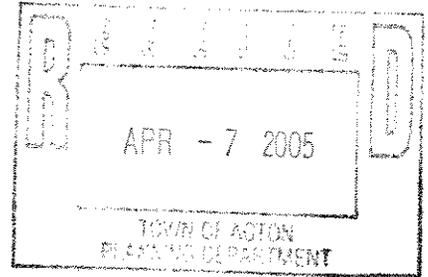
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Of Counsel
Julian J. D'Agostine

April 7, 2005

HAND DELIVERED

Roland Bartl
Town Planner
Town Hall
Acton, Massachusetts 01720



RE: Ellsworth Village

Dear Roland:

In accordance with the memoranda received from the Planning Board and Acton Community Housing Corporation, please find the following documents which have been modified in accordance with the requests contained therein:

1. Master Deed of Ellsworth Village Condominium;
2. By-Laws of Ellsworth Village Condominium;
3. Monitoring Agreement; and
4. Letter regarding access to the property.

Please note that all modifications to the first three listed documents have been made in bold print.

Please review and contact me with any questions or comments. Thank you for your anticipated cooperation in this matter.

Very truly yours,

D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.

By: 
Cathy S. Netburn
e-mail: cnetburn@dlpnlaw.com

CSN/tah
Enclosure
cc: Ellsworth Village, LLC
George Dimatrakis, Stamsky and McNary

three (3) Units and each having access through a private road named Ellsworth Village Road, as shown on the plan to Braebrook Road, Acton, Massachusetts, all as shown on the Condominium Plans which shows the layout, location, unit numbers and dimensions of the units as built. The Ellsworth Village Condominium Phase 1 contains two (2) units in one building and is the first phase of a fifteen (15) 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-three (33) units. Said Phase 1 consists of one (1) building, which contains two (2) units, each of which have access over Ellsworth Village Road shown on the Condominium Plans, to Braebrook Road, 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 2 through 15, as shown on the Condominium Plans hereinabove referred to, and any sub-phases thereof. The Declarant also reserves the right to have as an appurtenance to the construction of Phases 2 through 15, and any subphases thereof, 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 2 through 15, and any sub-phases thereof. 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 2 through 15, provided that such easement for access and construction shall not unreasonably interfere with the access of the owners of the units in Phase 2 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 and the number of buildings and units in 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 Buildings 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.

The Condominium is subject to the provisions of a Senior Residence Special Permit issued by the Town of Acton Planning Board which Special Permit is recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____, and accordingly, **three (3)** of the Units in the Condominium will be sold at prices specified in a Regulatory Agreement entered into between Declarant and the Town of Acton dated _____, 2005 and recorded herewith. **Two (2) of such units will be sold to persons or households with incomes at or below eighty percent (80%) of the regional median household income, and one (1) of such units will be sold to persons or households with incomes at or below seventy percent (70%) of the regional median household income. All of the units to be sold at prices specified in the Regulatory Agreement, as provided herein are hereinafter referred to as the "Affordable Units".**

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 Ellsworth Village 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 Ellsworth Village 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 may serve until the fifth annual meeting of the Unit Owners, in accordance with the By-Laws of the Association. 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 1 of the Condominium consists of one building containing two (2) units. The Condominium, when completed, will consist of fifteen (15) buildings each containing two (2) or three (3) units, for a total of thirty-three (33) units, and having access through a walkway and Ellsworth Village Road to Braebrook Road, 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 buildings have 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. 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.

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. RESTRICTIONS ON USE OF UNITS

- (a) Each Unit is hereby restricted to residential use and occupancy by senior citizens, fifty-five (55) years of age and older ("Qualifying Person"), their spouses, (including the surviving spouse of a deceased Qualifying Person), and/or a relative by blood or marriage of a Qualifying Person or of such spouse. provided that such relative must

be fifty-five (55) years of age or older (a "Qualified Relative"), except during a six (6) month period following the death or departure from the household of such Qualifying Person, his/her spouse, or Qualified Relative.

- (b) Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to: (i) at least one Qualifying Person; (ii) to the spouse or blood relative of a Qualifying Person, so long as the Qualifying Person occupies and intends to occupy the unit as his or her primary residence; or (iii) to a trust or other estate-planning vehicle under which the Qualifying Person holds a beneficial interest, so long as the Qualifying Person (or after the death of the Qualifying Person, his/her spouse or Qualified Relative) occupies or intends to occupy the Unit as his or her primary residence.
- (c) Each Residential Unit shall be occupied by no more than two persons as a single-family residence. A third occupant may be allowed for the express purpose of providing health care to the occupants.
- (d) Overnight guests who are younger than fifty-five (55) years of age shall be allowed for reasonable visitation periods not to exceed two (2) weeks in duration and not to exceed two (2) weeks per year. Children under the age of eighteen (18) shall not be allowed to reside in the Units; occupancy for two (2) weeks or less per year shall not be deemed occupancy by children. **Notwithstanding the foregoing, up to two (2) children per Unit, under the age of eighteen (18), whose parents are deceased or otherwise legally or physically incapacitated and unable to perform their parental functions, shall be allowed to reside with their grandparents without limitation as to time.**

- (e) Notwithstanding any provisions of this Section 9, Restrictions on Use of Units, to the contrary, the Declarant, its successors, assigns or affiliates has the right to use any Unit owned or leased by it or any common area or portion thereof or suitable facility in the Condominium for models and for offices for sales, construction, storage and any other lawful purpose. So long as Declarant owns any unit in the Condominium, it shall have the right to erect and maintain "for sale" signs in and on the Common areas and facilities of the Condominium.
- (f) Any lease or rental agreement for any Unit shall be to a Qualifying Person, their spouses, (including the surviving spouse of a deceased Qualifying Person), and/or a Qualified Relative, provided that the tenant(s) all meet the occupancy requirements of Section 9(a) herein, 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. 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 acknowledgement 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 to a Qualifying Person, his/her spouse(s) (including the surviving spouse of a deceased Qualifying Persons), and/or a Qualified Relative, any Units 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 its sole discretion, shall determine.

- (g) The occupants of each unit shall be entitled to keep one (1) pet, either a cat or a small 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, the By-Laws of the Corporation and the Ellsworth Village Rules and Regulations. 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, By-Laws or the Corporation, or Ellsworth Village Rules and Regulations shall be liable for the reasonable counsel fees incurred by the association and/or Corporation in enforcing same.

The Association also reserves 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.

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 appurtenant thereto, 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 Ellsworth Village Condominium plans annexed hereto.

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.

The Common Areas of the aforesaid Condominium also include those certain parcels of land shown on the Condominium Plans as "Open Space Easement A" and "Open Space

Easement C", which parcels areas shall be used for conservation and passive recreation, shall be kept in their open and natural state, shall not be built upon, developed or used except for the construction of the "Village House" for mail on Open Space Easement C, and trails and walking paths, drainage facilities, septic facilities, and a gated emergency access road on Open Space Easement A, all in accordance with the provisions of the Town of Acton By-Law for a Senior Residence Development, and as more particularly set forth in Schedule A of this Master Deed.

Ellsworth Village Road, which provides access to the Units from Brabrook Road, and the gated emergency access way situated on Open Space Easement A, as shown on the Condominium Plans, are private ways that are part of the Common Areas of the Condominium and will never be accepted by the Town of Acton as public ways. Accordingly, maintenance, repaving, snow and ice removal and any other repairs of every type or kind, or other work necessary to keep such roadways safe and passable, will be the sole responsibility of the Association in perpetuity, to be paid out of monthly condominium fees and other assessments made pursuant to the provisions of the By-laws of the Association, and the Town of Acton shall have no responsibility regarding same.

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. Consistent with the foregoing, the percentage interest of each of the Affordable Units will be based on the reduced sale price of said Unit as specified in the Regulatory Agreement, and as such, the percentage interest of each of the Affordable Units (and the corresponding condominium fees) will be less than other comparably sized Units in the Condominium. Provided however, in the event any of the "Affordable Units" lose their "Affordable" status pursuant to the provisions of the Regulatory Agreement and/or Deed Rider, and are no longer subject to any restriction as to price or income of purchaser, the percentage interests of the units in the Condominium shall be adjusted to make the percentage interest (and the corresponding condominium fees) of the former "Affordable Unit" consistent with other units of comparable size and amenity.

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-seven (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.

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 statute 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 Material 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 Material 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 , 2005

ELLSWORTH VILLAGE, LLC.

By: _____
Michael J. Jeanson, Member

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared Michael J. Jeanson and James Fenton, Members of Ellsworth Village, LLC, proved to me through satisfactory evidence of identification, which were Massachusetts Drivers License, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:

My Commission expires:

E:\Condo\Ellsworth Village Condominium

ELLSWORTH VILLAGE CONDOMINIUM

SCHEDULE A

That certain parcel of land in Acton, Middlesex County, Massachusetts, being shown as Lot 1B on a plan entitled, "Ellsworth Village, Senior Residence, Acton, Massachusetts", dated , recorded with the Middlesex South District Registry of Deeds in Book , Page .

Reserving to the Declarant, the following rights over the strip of land being shown as "Open Space Easement A" on the aforesaid plan (hereinafter "Easement Area"):

- (a) the perpetual right and easement to install, maintain, repair and/or replace drainage facilities of all types and kinds, together with any and all appurtenance thereto, for the drainage of surface and subsurface water, over, under and upon the Easement Area, including without limitation, the right to enter upon the Easement Area, with materials and equipment necessary or required in order to effectuate this reservation of easement;
- (b) the perpetual right and easement to install, maintain, repair and/or replace underground sewage treatment and disposal facilities of all types and kinds, for the sewage system to service the Condominium, together with any and all appurtenance thereto, over, under and upon Easement Area, including without limitation, the right to enter upon the Easement Area, with materials and equipment necessary or required in order to effectuate this reservation of easement.
- (c) the perpetual right and easement to pass and repass over and upon that certain strip of land situated within the Easement Area and being shown as "Emergency Access Easement", for the purpose of emergency access by police, fire, ambulance or other emergency service, for ingress and egress to the Condominium, including without limitation, the right to construct, maintain, reconstruct and/or repair a roadway within such Emergency Access Easement, to pave and repave same, and to construct a gate that can be removed for such emergency access.
- (d) the perpetual right and easement to construct a walkway or other trail for passage by foot over the easement area for recreational purposes and for access to abutting land.

ELLSWORTH VILLAGE CONDOMINIUM

SCHEDULE B

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>STREET NO.</u>	<u>SQUARE FOOTAGE</u>
1	1		
2	1		
3	2		
4	2		
5	3		
6	3		
7	4		
8	4		
9	5		
10	5		
11	6		
12	6		
13	6		
14	7		
15	7		
16	8		
17	8		
18	8		
19	9		
20	9		
21	10		
22	10		
23	10		
24	11		
25	11		
26	12		
27	12		
28	13		
29	13		
30	14		
31	14		
32	15		
33	15		

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.

ELLSWORTH VILLAGE CONDOMINIUM

PHASE 1

SCHEDULE C

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>STREET NO.</u>	<u>PERCENTAGE OF INTEREST</u>
1	1		
2	1		

BY-LAWS OF
ELLSWORTH VILLAGE 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 Ellsworth Village 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 Ellsworth Village 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."

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

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

Ellsworth Village Condominium Master Deed - See Master Deed.

Ellsworth Village 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 Ellsworth Village, LLC, its 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 Ellsworth Village 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 Ellsworth Village 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 Ellsworth Village 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.

Ellsworth Village Rules and Regulations shall mean those rules and regulations as shall be adopted by the Board of Governors of the Association.

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 or referred to in said Master Deed entitled, "Ellsworth Village Senior Residence, Plan of Land in Acton, (Middlesex County), Massachusetts, For Ellsworth Village, LLC" dated _____, and a plan entitled, "Ellsworth Village Condominium Floor Plan in Acton, Massachusetts, (Middlesex County), for : Ellsworth Village, LLC, dated _____, all of which plans were prepared by Stamski and McNary, Inc., 80 Harris Street, Acton, Massachusetts, to be recorded with said Deed, said plans being the Condominium Plans hereafter referred to.

Section 2 - The Association

Ellsworth Village 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 Ellsworth Village 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 Ellsworth Village Condominium Association, the Articles of the Ellsworth Village Condominium Association, Inc., 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 Associations, shall be a Unit Owner. Except as provided in the Articles of the Associations 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 Associations 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. 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.

- m. 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 may serve until the fifth 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; and
- b. Five (5) years after conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirements 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. 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 Ellsworth Village 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 a location 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 a Boston-based, State or Federal chartered, commercial banking institution 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 of 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. **Provided however that exterior modifications for solar power and heating installations may be performed subject to the approval of the Board of Governors which approval will not be unreasonably withheld provided that such installations do not detract from the appearance of the Condominium or otherwise affect the aesthetics of the Condominium in a negative manner.**
- 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 Middlesex South District 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 benefited 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 benefited.

Section 10 - Cost Allotment of Improvements

- a. If fifty (50%) percent or more, but less than 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 Ellsworth Village 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 only those fixtures and equipment that provide heating and air conditioning services; all bathroom fixtures, lighting fixtures, ceiling surfaces and tiles, and all interior partitions and other property within the Units which are customarily considered a part of the Unit for mortgage purposes (regardless of whether such property is part of the common elements). The master policy shall also specifically exclude coverage, except as hereinbefore provided, for floor coverings, wall coverings, equipment, shelving, built-in equipment, cabinets, built-in cabinets, built-in appliances or furniture of every type, description and kind.

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 liability 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;
 - (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; and

- (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.
- 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 as 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 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 Ellsworth Village Condominium Association, Inc., this ____ day of April, 2004.

The Ellsworth Village Condominium Association,
Inc.

By: _____
James D. Fenton, President

By: _____
Michael J. Jeanson, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April __, 2005

Then personally appeared before me, the undersigned notary public, James D. Fenton, President of The Ellsworth Village Condominium Association, Inc., proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President of The Ellsworth Village Condominium Association, Inc. as aforesaid.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April __, 2005

Then personally appeared before me, the undersigned notary public, Michael J. Jeanson, Treasurer of The Ellsworth Village Condominium Association, Inc., proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Treasurer of The Ellsworth Village Condominium Association, Inc., as aforesaid.

Notary Public
My Commission Expires:

REGULATORY AGREEMENT

This Regulatory Agreement (this "Agreement") is made this ___ day of _____, 2004 by and between Ellsworth Village, a Massachusetts Limited Liability Company, having an address at 25 Westford Lane, Acton, MA 01720 ("Developer"), and the Town of Acton, acting by and through its Board of Selectmen, having an address of 472 Main Street, Acton, MA 01720 (the "Municipality").

BACKGROUND:

A. The Developer intends to construct a 33 Unit condominium development on a acre site off of Braebrook Road in Acton, Massachusetts, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

B. The Developer has received a Senior Residence Special Permit (the "Special Permit") from the Planning Board for the Municipality under Section 9B of the Town of Acton Zoning By-Law, which permit is recorded at the Middlesex South District Registry of Deeds as Instrument No. _____ of _____, in Book _____, Page _____.

C. The Special Permit has specified that **three (3)** condominium units, will be affordable units (the "Affordable Units") which will be subject to this Regulatory Agreement to restrict the sale of the Affordable Units to **individuals who are over 55 years of age and are moderate income first time home buyers, or otherwise qualify under the LIP Elderly Exception Program.**

Deleted: _____

D. Pursuant to the terms of this Regulatory Agreement, the **two (2) of the** Affordable Units will be sold to households earning no more than eighty percent (80%) of the median income, adjusted for household size, for the Boston Primary Metropolitan Statistical Area, and one of the Affordable Units will be sold to a household earning no more than seventy (70%) percent of the median income, adjusted for household size, for the Boston Primary Metropolitan Statistical Area, (the "Base Income") as published from time to time by the Department of Housing and Community Development or its successor agency ("DHCD").

F. Pursuant to the requirements of the Special Permit and this Regulatory Agreement, the Developer has agreed to retain the Town of Acton (the "Monitoring Agent") to perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirement

NOW THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer, the Bank and the Municipality hereby agree to the following:

1. This Regulatory Agreement affects and encumbers only the Affordable Units being Units _____, _____ of the Ellsworth Village Condominium.

Unit Distribution. The distribution of the Affordable Units by Unit size shall be as set forth below:

	Unit	Unit	Unit
Initial Certified Sales Price	\$		

2. Discount Rate. A Discount Rate for each Affordable Unit shall be equal to the Certified Sales Price of that Affordable Unit on the date of execution of this Agreement divided by the Fair Market Appraised Value of that Affordable Unit at the time of the proposed sale. The Fair Market Appraised Value of the Affordable Unit shall be the fair market value of the Unit at the time of the proposed sale made on the assumption that the Unit is not subject to the restrictions contained in this Agreement or in the Deed Rider attached hereto as Exhibit "B" ("Deed Rider"), as determined by an appraiser retained by the seller of the Affordable Unit. The Discount Rate set forth above has been determined in accordance with this procedure and shall be binding on all parties to this Agreement and on all their successors and assigns, including successors in title to any Affordable Unit.

3. Affordability. Except as provided in the affordable housing restriction set forth in the Deed Rider, the Affordable Units shall be sold to households earning no more than the Base Income, as defined herein.

4. Deed Rider. At the time of sale of the Affordable Units by the Developer, the Developer shall execute and shall, as a condition of sale, cause the purchasers of the Affordable Units to execute an affordable housing restriction substantially in the form of Exhibit B attached hereto and made a part hereof (each a "Deed Rider"). Each Deed Rider shall require the Unit owner at the time he/she desires to sell the Affordable Unit to notify the Monitoring Agent of the discounted purchase price based on an appraisal ordered by the seller and more particularly described in the Deed Rider. The owner of the Affordable Unit must thereafter offer the Unit to the Municipality which may or may not exercise its right-of-first refusal or find an eligible purchaser to purchase the Affordable Unit, and if not, the seller must find a purchaser who meets the income guidelines.

If the Affordable Unit owner is unable to find an eligible purchaser within a one hundred and eighty (180) day period from the date the Affordable Unit was put on the market, as determined by the date of the first advertisement for sale, or the date an agreement was signed with a listing broker to market the Affordable Unit, the seller can sell the Affordable Unit to any person, regardless of his/her income at the present fair market value of the property, free of any future resale restrictions, provided that the difference between the actual resale price and the discounted purchase price calculated by application of the discount rate to the market appraised value at the time of sale shall be paid to the Municipality for deposit in an affordable housing fund to be used by the Municipality to support other affordable housing within the Municipality.

The Deed Rider requires the Affordable Unit owner and any purchaser to execute at the time of resale a similar Deed Rider which shall be attached to and made a part of the deed from

the owner to the purchaser, so that the affordability of each Affordable Unit will be preserved each time that subsequent resale of the Affordable Unit occurs during the period of affordability specified in this Agreement.

5. Affirmative Marketing. The Developer shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin or any other basis prohibited by law in the selection of the buyers for the Affordable Units. The Developer shall affirmatively market the Affordable Units to minority households through direct outreach efforts to local churches, social service and civic organizations as well as local and area-wide newsprint media where minority households are most likely to be contacted. This outreach effort must continue for a period of at least 60 days prior to the selection of buyers for the Affordable Units. The Developer agrees to maintain for at least three (3) years following the sale of the Affordable Units, a record of all newspaper ads, outreach letters translations, leaflets and any other outreach efforts that may be inspected by the Monitoring Agent or the Municipality.

6. Recording. Upon execution hereof, the Developer shall immediately cause this Agreement to be recorded with the Registry of Deeds for the County where the Project is located and/or, if the Project consists in whole or in part of registered land, to be filed with the Registry District of the Land Court for the County where the Project is located. Upon recording and/or filing as applicable, the Developer shall immediately transmit to the Bank and the Monitoring Agent evidence of such recording and/or filing.

7. Representations. The Developer hereby represents, covenants and warrants as follows:

- (a) The Developer (i) is a limited liability company duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own properties and assets and to carry on its business as now being conducted, and (iii) has full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the Project free and clear of any lien or encumbrance, subject to the encumbrances created pursuant to this Agreement, any loan documents relating to the Project, or other permitted encumbrances.

8. Governing Law/Amendments/Severability. The laws of the Commonwealth of Massachusetts shall govern this Agreement. Any amendments to this Agreement must be in

writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

9. Monitoring Agent. The Developer shall retain the Monitoring Agent for purposes of monitoring Developer's performance hereunder. All notices and reports required to be submitted hereunder shall be submitted directly to the Monitoring Agent. The Monitoring Agent shall have authority to act in all matters relating to this Agreement.

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

Developer:

Ellsworth Village LLC
25 Westford Lane
Acton, MA 01720

Monitoring Agent and Municipality:

Town of Acton
Board of Selectmen
Town Hall – 472 Main Street
Acton, MA 01720

11. Term. The term of this Agreement shall be commensurate with the term of the Deed Rider attached as Exhibit B and this Agreement shall expire on the date on which there are no longer any Deed Riders encumbering any of the Affordable Units described herein.

12. Successors and Assigns. The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns for the term of the Agreement. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

13. Default. If any default, violation or breach by the Developer hereunder is not cured to the satisfaction of the Monitoring Agent within ninety (90) days after notice to the Developer thereof, then the Monitoring Agent may exercise any legal remedy available to it.

14. Mortgagee Consent. The Developer represents and warrants that it has obtained the consent or subordination of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed a consent or subordination to this Agreement.

15. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

16. Indemnity. The Developer agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship to the Project under this Agreement and not involving the Monitoring Agent acting in bad faith and with gross negligence.

17. Amendments. This Agreement shall not be amended without written consent of the Monitoring Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument as of the date first above written.

DEVELOPER:

ELLSWORTH VILLAGE, LLC

By: _____
Member

James D. Fenton

MONITORING AGENT AND MUNICIPALITY:

The Town of Acton
Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. , , 2005

On this day of , 2005, before me, the undersigned notary public, personally appeared _____, member of Ellsworth Village, LLC, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as member of Ellsworth Village, LLC.

Notary Public:
My Commission Expires:

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss., , 2005

On this day of , 2005, before me, the undersigned notary public, personally appeared _____, members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose

Notary Public:
My Commission Expires:

CONSENT AND SUBORDINATION

Middlesex Savings Bank, holder of a Mortgage and Security Agreement from Ellsworth Village, LLC. to it, dated , recorded with the Middlesex South District Registry of Deeds as Instrument No. of , in Book , Page , a Collateral Assignment of Licenses and Permits, recorded with said Deeds as Instrument No., in Book , Page , a Collateral Assignment of Leases and Rents, recorded with said Deeds as, in Book , Page , and a Uniform Commercial Code Financing Statement, recorded with said Deeds as, in Book , Page (Said Mortgage and Security Agreement, Collateral Assignment of Licenses and Permits, Collateral Assignment of Leases and Rents and Uniform Commercial Code Financing Statement are hereinafter individually and collectively referred to as the "Mortgage"), hereby subordinates the Mortgage to that certain Regulatory Agreement by and between The Town of Acton and Ellsworth Village, LLC, dated , 2005, and consents to the recording thereof.

IN WITNESS WHEREOF, the said Middlesex Savings Bank, has executed and delivered this Subordination and Consent in its name and behalf by _____, its _____, duly authorized, this ____ day of _____, 2005.

MIDDLESEX SAVINGS BANK

By: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. , , 2005

On this day of , 2005, before me, the undersigned notary public, personally appeared _____, Vice President of Middlesex Savings Bank, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of Middlesex Savings Bank.

Notary Public:
My Commission Expires:

EXHIBIT "A"

MONITORING SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2005 by and between Ellsworth Village, LLC, a Massachusetts limited liability company, having an address at 25 Westford Lane, Acton, MA 01720 ("Developer"), and the TOWN OF ACTON with an address at Town Hall, 472 Main Street, Acton, MA 01720 ("Monitoring Agent").

Background

A. The Town of Acton Planning Board ("Municipality"), has granted a Senior Residence Special Permit ("Special Permit"), for a project containing thirty three (33) condominium units off of Brabrook Road in Acton, Massachusetts ("Project") and the Project is subject to a Regulatory Agreement dated _____, 2005 (the "Regulatory Agreement") between the Municipality and the Developer.

B. Pursuant to the Special Permit and the Regulatory Agreement, at least ____ units in the Project (the "Affordable Units") are required to be sold to households whose incomes do not exceed 80% of the median income (adjusted for household size) for the Boston Primary Metropolitan Statistical Area. In addition, the Affordable Units will be subject to deed riders governing resale (the "Affordability Requirement") in perpetuity or (if a perpetual restriction is not legally permissible) for a period ending Ninety-nine (99) years from the date hereof.

C. Pursuant to requirements of the Regulatory Agreement, the Developer has agreed to retain the Monitoring Agent to perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirement.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Monitoring Services. Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirements, including:
 - (i) Review of the substantive compliance of the Project with the Affordability Requirement
 - (ii) Review of income certifications, deeds and deed riders with respect to initial sales of Affordable Units.
 - (iii) Certification to the owners of Affordable Units as to the maximum sales price that a household having the Base Income (as defined in the Regulatory Agreement) can pay for an Affordable Unit.

- (iv) Monitoring of resales of Affordable Units for compliance with the terms of the applicable deed riders and issuance of certifications, as appropriate, approving resales and the payment of recapture amounts.

The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Project and the Developer with the Affordability Requirement. The services hereunder shall include follow-up discussions with the Developer, if appropriate, after an event of noncompliance.

2. Monitoring Services Fee. The Monitoring Agent shall receive a fee of **Five Hundred (\$500.00)** Dollars from the Developer at the time of execution of this Agreement. Such fee shall constitute payment for the services of the Monitoring Agent with respect to the initial sales of the Affordable Units. Thereafter, as provided in the deed rider attached to the deed of each Affordable Unit, the Monitoring Agent shall receive a fee of **three (3.00%)** percent of the Maximum Resale Price, to be paid by each Seller of the Affordable Unit at each closing as a condition precedent to closing, for the services with respect to monitoring the sales transaction as provided in this Agreement.

If the Monitoring Agent's fee is not paid at the time of closing, the Monitoring Agent shall be entitled to payment from the purchaser of the Affordable Unit and to bring an action and seek an attachment of the interest of the purchaser in the Affordable Unit.

3. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the Regulatory Agreement or a failure by the Developer to take appropriate actions to cure a default under the Regulatory Agreement, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Developer, including, without limitation, notice to the Municipality or legal action to compel the Developer to comply with the requirements of the Regulatory Agreement. In the event of a violation of the provisions of a deed rider, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Unit owner or the Unit owner's successors in title, including, without limitation, notice to the Municipality or legal action to compel the Unit owner to comply with the requirements of the relevant deed rider. The form of deed rider will provide for payment by the Unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Unit owner thereunder. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing a deed rider against the Unit owner and in any action to seek an attachment of the relevant Unit to secure payment of such fees and expenses.

The Monitoring Agent shall look solely to the reimbursement rights described above for payment of the Monitoring Agent's costs and expenses. Nothing in this Agreement shall be construed to require the Monitoring Agent to expend more than \$20,000 in enforcing the provisions of the Regulatory Agreement or to take any particular enforcement action against Developer.

4. Term. The monitoring services are to be provided for the full term of the Regulatory Agreement. The term of this Agreement and the Monitoring Services Agreement

shall be commensurate with the term of the Deed Rider attached as Exhibit B and this Agreement shall expire on the date on which there are no longer any Deed Riders encumbering any of the Affordable Units described herein.

5. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

6. Indemnity. The Developer agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project under this Agreement and not involving claims that the Monitoring Agent acted in bad faith or with gross negligence.

7. Applicable Law. This Agreement, and the application or interpretation hereof, shall be governed by the laws of the Commonwealth of Massachusetts.

8. Binding Agreement. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns. In the event that the Monitoring Agent shall cease to exist hereunder, then a successor Monitoring Agent may be appointed by FHLBB and the Municipality.

9. Assignment. The Monitoring Agent may assign its rights and obligations under this Agreement to a responsible entity in its sole discretion, with notice to the Developer.

10. Headings. All paragraph headings in this Agreement are for convenience or reference only and are not intended to qualify the meaning of the paragraph.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

DEVELOPER:

ELLSWORTH VILLAGE, LLC

By: _____
James D. Fenton, Member

MONITORING AGENT

The Town of Acton Board of Selectmen

April , 2005

Town of Acton Planning Board
Town Hall
Acton, Massachusetts 01720

RE: Ellsworth Village Senior Residence

Dear Sir or Madam:

This letter will confirm that in consideration of the granting of a Senior Residence Special Permit by the Planning Board of the Town of Acton, Massachusetts (hereinafter referred to as the "Board") of a plan of land located in Acton, Middlesex County, Massachusetts entitled, "Ellsworth Village Senior Residence, Acton, Massachusetts" for Ellsworth Village, LLC dated _____, by Stamski and McNary, to be recorded herewith, Ellsworth Village, LLC, (the "Developer") hereby grants to the Town of Acton the right to enter upon the land shown on the aforesaid plan to complete the ways and services if the Developer does not complete the same in accordance with its obligations. This covenant is being given to the Town of Acton in accordance with Section 3.10 of the Town of Acton Senior Residence Special Permit Rules and Regulations.

Sincerely,

Ellsworth Village, LLC

By: _____
James Fenton, Member